

the seat was, and get admitted up there. But unless you had something to do with the Supreme Court, there wasn't any need for you to do that, because you were going to do your practice in the local courts--the trial courts.

Hicke: The state supreme court you're talking about?

Poole: The Pennsylvania State Supreme Court. I've got this old diploma. It's right over there, I think. Hold it just a second. This is my college diploma.

Hicke: "Bachelor of Arts, 1936, from the University of Michigan." And this is the Supreme Court of Pennsylvania, 1940. You were admitted in 1940.

Poole: Yes, 1940, that is correct. So, anyhow, I decided to do that. In those days, the district court would appoint people to defend persons who were indigent. You didn't get paid. So, I did some of that because I was interested in the federal practice anyhow.

Hicke: This is in Pennsylvania?

Poole: No, when I got here. In Pennsylvania I worked for a small office. There were four lawyers in it.

Hicke: Brown and Jones?

Poole: Brown and Jones. Homer Brown and Richard Jones and a couple of lawyers who left shortly after I came there. I made the third person. I was an employee of them, of course, and did all the dirty little things that you had to do.

Military Service: Trials and Tribulations

Poole: I liked trial work. When I was an enlisted man up in New Hampshire, I was, of course, a member of a bar, and so I was called upon to defend some of the soldiers in courts martial, because though there was a designated trial judge advocate and a designated defense counsel, enlisted people mistrusted them and thought that they would be delivered into the hands of the Philistines if they took their counsel. So they went through what they called a Form 20; every soldier had a Form 20 that listed who he was, date of birth, where he came from, his schooling, and what his occupation was. That way, theoretically, they could assign you to something that would be befitting your educational skill. Well, as you may know, in those days the armed services were

thoroughly and entirely segregated. So I was working for the National Labor Relations Board. I told you that, didn't I?

Hicke: Yes, you did.

Poole: I got my draft notice while I was in Washington with the NLRB [National Labor Relations Board], and they sent me to the North Atlantic Wing of the Air Transport Command based in Manchester, New Hampshire. That was about, I guess, probably forty miles from Boston. I was assigned to an all-black squadron, which was primarily one that did labor work.

Hicke: You were doing some courts martial?

Poole: Yes. Not right away. What really happened was, there was a soldier--a Caucasian soldier--who got into a tremendous thing with his commanding officer, and they were out to really take his hide off. He didn't want the defense counsel that was selected for him to defend him, because he felt that he had no chance. So they went through these forms. These forms were coded by having holes in them at certain places. And where you could find this long needle to go through there, it would pick out people, so they could see who on there had training.

Hicke: They found you.

Poole: I became a staff sergeant very quickly. My commanding officer said, "I'm not going to let you hang around as a private." So within about four or five months I was a staff sergeant. My commanding officer came and said, "The commandant of the base wants you come up to headquarters." And I said, "What have I done?" And he said, "What they want you to do is they want you to defend somebody from one of the other outfits who is in trouble." So I went up there, and they explained to me what it was.

The base trial judge advocate was a fellow named--I've forgotten his first name. His name was Oberg. Major Oberg explained to me that this man had really been a hard person to deal with, that he'd been in trouble before, and he had threatened his commanding officer. In fact, he was a big, powerful guy. He said he rejected the defense counsel. "And so we looked up these names, and we found your name and four or five others." He took this to him, and he looked at it, and he said, "Hey, who is this guy?" And he said, you know, "This is not a white noncom?" Major Oberg said, "He's not," and he said, "That's the one I want." So, I got the manuals and the specifications and all that, and I went to the trial.

Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

Northern California U.S. District Court Oral History Series

Cecil F. Poole

CIVIL RIGHTS, LAW, AND THE FEDERAL COURTS:
THE LIFE OF CECIL POOLE, 1914-1997

With an Introduction by
William K. Coblentz

Interviews conducted by
Carole Hicke
in 1993

Since 1954 the Regional Oral History Office has been interviewing leading participants in or well-placed witnesses to major events in the development of Northern California, the West, and the Nation. Oral history is a method of collecting historical information through tape-recorded interviews between a narrator with firsthand knowledge of historically significant events and a well-informed interviewer, with the goal of preserving substantive additions to the historical record. The tape recording is transcribed, lightly edited for continuity and clarity, and reviewed by the interviewee. The corrected manuscript is indexed, bound with photographs and illustrative materials, and placed in The Bancroft Library at the University of California, Berkeley, and in other research collections for scholarly use. Because it is primary material, oral history is not intended to present the final, verified, or complete narrative of events. It is a spoken account, offered by the interviewee in response to questioning, and as such it is reflective, partisan, deeply involved, and irreplaceable.

All uses of this manuscript are covered by a legal agreement between The Regents of the University of California and Cecil F. Poole dated June 1, 1997. The manuscript is thereby made available for research purposes. All literary rights in the manuscript, including the right to publish, are reserved to The Bancroft Library of the University of California, Berkeley. No part of the manuscript may be quoted for publication without the written permission of the Director of The Bancroft Library of the University of California, Berkeley.

Requests for permission to quote for publication should be addressed to the Regional Oral History Office, 486 Library, University of California, Berkeley 94720, and should include identification of the specific passages to be quoted, anticipated use of the passages, and identification of the user. The legal agreement with Cecil F. Poole requires that he be notified of the request and allowed thirty days in which to respond.

It is recommended that this oral history be cited as follows:

Cecil F. Poole, "Civil Rights, Law, and the Federal Courts: The Life of Cecil Poole, 1914-1997," an oral history conducted in 1993 by Carole Hicke, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1997.

Copy no. 1

Cecil F. Poole

Services in memory of Judge Cecil F. Poole will be held at 3:30 p.m. Friday at Herbst Auditorium, 401 Van Ness Ave. in San Francisco.

Judge Poole, 83, a senior member of the U.S. Court of Appeals in San Francisco and former U.S. attorney, died November 12 from complications of pneumonia after a long illness.

Judge Poole's distinguished legal career spanned 55 years and included service as a military attorney, a federal labor relations lawyer, and as a prosecutor for the City and County of San Francisco and the U.S. Justice Department.

He also served as a legal secretary to the governor of California, a private attorney and a federal judge at the district and appellate levels.

Judge Poole's family requests that contributions in the judge's memory be directed to the donor's favorite charity.

the U.S. Customs Service in San Francisco for nearly two decades, died Wednesday in Temple, Texas, at the age of 88.

Born in Cheyenne, Wyo., in 1909, Mr. Potts graduated from Oklahoma State University in 1933 and joined the faculty of Cameron College in Lawton, Okla., where he taught chemistry.

After spending three years at the college, Mr. Potts went to work for the federal government. He served for nearly 40 years in a variety of capacities, from a shrimp inspector in New Orleans to director of the U.S. Customs Laboratory in San Francisco, his last job before retiring in 1975.

Mr. Potts was a member of the American Chemical Society, the Oklahoma State University Alumni Association, the U.S. Coast Guard Reserve and the board of directors of the South San Francisco Boys and Girls Club.

He is survived by his wife, Dora Lou Potts of Temple; his son and daughter-in-law, Warren and Georgia Potts of Windsor (Sonoma County); stepsons Glen Roe of St. Charles, Mo., Lark Edminster of Montesano, Wash., and Merle Cart-

er of Falls Church, Va.; five grandchildren; and five great-grandchildren.

A memorial service in Mr. Potts honor will be held on Thursday at 2:30 p.m. at the Menlo Presbyterian Church, 950 Santa Cruz Ave., Menlo Park.

Donations in his memory may be made to the Alzheimer's Association, 330 Distel Circle, Suite A, Los Altos 94022.

— J. L. Pimsleur



Cecil Poole, charcoal drawing by Mark Franaszek, 1997.

Cataloging information:

POOLE, Cecil F. (1914-1997)

Federal district and appellate judge

Civil Rights, Law, and the Federal Courts: The Life of Cecil Poole, 1914-1997, 1997, vii, 248pp.

Childhood and education; military service; private law practice in San Francisco; Assistant U.S. District Attorney, Northern District, California, 1951-58; Secy, Legal, to California Governor Edmund G. Brown, 1958-61; U.S. District Attorney, Northern District, California, 1961-70; Federal Judge, U.S. District Court, Northern District, California, 1976-79; Judge, U.S. Court of Appeals, Ninth Judicial Circuit, 1979-1997; sentencing guidelines; appellate procedures; challenges for an African-American lawyer and judge; Democratic politics; some significant appellate cases.

Introduction by William K. Coblentz, longtime friend and law firm partner.

Interviewed 1993 by Carole Hicke for the Northern California U.S. District Court Oral History Series, Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

ACKNOWLEDGMENTS

The Bancroft Library, on behalf of future researchers,
wishes to thank the following persons and
organizations whose contributions made possible
this oral history of Cecil Poole.

Peter E. Haas

Walter A. Haas, Jr.

Levi Strauss & Co.

United States Court of Appeals for the Ninth Circuit

United States District Court for the Northern District of
California Historical Society

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PREFACE

The Historical Society of the United States District Court for the Northern District of California is a non-profit organization established by federal practitioners and judges and is dedicated to preserve and develop the history of this court. The Society's goals are threefold: 1) to marshal the sources for historical study of the District; 2) to initiate and encourage comprehensive and scholarly study of the court; and 3) to develop interpretive programs and exhibits making the fruits of this research accessible and meaningful to the legal community and the general public.

In 1980 this series of oral histories conducted by The Bancroft Library was initiated as an important effort in the furtherance of the Society's objectives. By preserving the personal reminiscences of individuals whose experiences and memory can yield valuable "oral evidence" of the court's history, the Society hopes to enhance and amplify the written record.

In addition to historical study of the District, the Society hopes to promote greater public understanding and appreciation of the role of the federal judiciary. Except for those involved in the legal process, the operation, significance, and impact of federal trial courts remains largely a mystery to most Americans. By focusing on the history and activities of the Northern District, the Society hopes to bridge this gap between the legal and lay world and even encourage other District courts to initiate similar efforts. As the nation nears the 200th anniversary of the ratification of the United States Constitution, it is an appropriate time to raise the level of public understanding by placing the contemporary role of district courts in historical perspective.

Thanks are due to the foresight and generosity of the individuals and organizations whose support make this work possible.

Robert F. Peckham,
Historical Society of the
U.S. District Court,
Northern District of
California

San Francisco, California
April 1981

Eighteen years since its founding, the U.S. District Court for the Northern District of California Historical Society continues to pursue the goals outlined above by its founder, Judge Robert F. Peckham. The comprehensive oral histories conducted by The Bancroft Library are a central part of the Society's efforts to record the history of the court and of the law in northern California. As Judge Peckham explained, by preserving "oral evidence" of the court's development, the Society hopes to enhance the historical record contained in more traditional written sources.

The generosity of individuals and organizations continues to be important in making these volumes possible. Each oral history contains a list of contributors whose foresight has helped preserve a part of the Northern District Court's history.

Thelton E. Henderson
Historical Society of the
U.S. District Court,
Northern District of
California

San Francisco, California
December 1995

NORTHERN CALIFORNIA U.S. DISTRICT COURT SERIES
Interviews Completed by 1997

Harris, George B., "Memories of San Francisco Legal Practice and State and Federal Courts, 1920s-1960s," 1981.

Orrick, William H., Jr., "A Life in Public Service: California Politics, the Kennedy Administration, and the Federal Bench," 1989.

"The Honorable Robert F. Peckham, 1920-1993: His Legal, Political, and Judicial Life," 1995. Includes interviews with friends and colleagues.

Phleger, Herman, "Observations on the U.S. District Court for the Northern District of California, 1900-1940," 1981.

Poole, Cecil, "Civil Rights, Law, and the Federal Courts: The Life of Cecil Poole, 1914-1997," 1997.

Sweigert, William T., Sr., "Administration and Ethics in the Governor's Office and the Courts, California, 1939-1975," 1987.

Wollenberg, Albert C., Sr., "To Do the Job Well: A Life in Legislative, Judicial, and Community Service," 1981.

Zirpoli, Alfonso J., "Faith in Justice: Alfonso J. Zirpoli and the United States District Court for the Northern District of California," 1984.

Weigel, Stanley. In progress.

INTRODUCTION--by William K. Coblentz

For almost fifty years, I have known the bounty of Cecil Poole's friendship and compassion. We first became acquainted when he began his career in California working for the federal government. But it was not until Cecil joined the San Francisco District Attorney's office, then headed by future Governor Edmund G. "Pat" Brown, that our friendship blossomed.

He and his charming wife, Charlotte, were friends of my wife, Jean, and myself, and we saw each other on many an occasion. When Cecil and I accepted positions in Sacramento to work with newly-elected Governor Pat Brown, we were reluctant at that time to move our families. So we shared an apartment for almost a year and during that time we got to know each other very well.

I found during that time that Cecil had the courage to speak plainly when that was right and needed, and the everlasting intuition and tact to be silent when that would prove the sovereign remedy. He indeed looked at the world with a steady gaze.

Cecil is a man of values, high ones. But I know he holds on to those values of the past provisionally only in the knowledge that they will change, but he holds them as guides. This is not, as Justice Holmes once remarked, a duty; it is a necessity. How else are we to know anything?

Cecil, as I have said before, loves to talk history, law, historical personalities. He is at special pains to know most thoroughly those personalities he has most reason to distrust or deplore. Or, to quote his brother-in-spirit, Edmund Burke, persons who lack "what I call principles, a uniform rule and scheme of life."

Cecil never comments on a court decision, whether it be the Supreme Court, his own, or other Court of Appeals, without having the text before him. He has to know the fine points. But when he has them clearly in mind, he moves quickly. His judgment is firm and unformed by fashion. He is high-minded, but high-mindedness floating free of facts makes him squirm. He does not hesitate to commit himself for fear of later reversal. It does not matter if an opinion has to be changed. The only abiding thing, as Justice Brandeis used to repeat, is change.

Cecil and I have been a lot of places together, most of them respectable, and not all of them easy. One thing you can say about Cecil--he can talk in depth on any subject and sometimes does. He is as good on foreign relations as he is on stare decises. This is known as the unrevealing comparative.

Cecil has given to me and so many others wisdom, generosity of spirit, respect, fairness, compassion and brotherhood. He believed in the words of Huddie Ledbetter, the immortal minstrel of Morinsport, Louisiana. "We are in the same boat, brother, and when you shake one end, you are gonna rock the other."

William K. Coblentz

June 1997
San Francisco

INTERVIEW HISTORY--Cecil F. Poole

Cecil F. Poole had an august and acclaimed legal career of fifty-five years, serving in government positions, in private practice, and, most notably, as federal judge. As the first African-American U.S. attorney for the Northern District of California and the first appointed to the federal bench in the same district, Judge Poole pioneered equal opportunity in legal history.

Judge Poole was born in 1914 in Birmingham, Alabama. His father moved the family to Pittsburgh, Pennsylvania, where the schools were not segregated. As a child, he liked school, liked to read--especially the Old Testament--and knew by the time he was in ninth grade that he would be a lawyer. After earning his bachelor's and law degrees from the University of Michigan, he took his master's degree in law at Harvard in 1939. Drafted in 1942, he was commissioned as an officer in the U.S. Army Air Corps, where he served during World War II, and was assigned to the 332nd Fighter Group--the original group of black pilots--in Tuskegee, Alabama, where he was assistant trial judge advocate.

A stint with the West Coast Office of Price Administration took him to Oakland, California, in 1946, and three years later, he joined the San Francisco District Attorney's Office as county prosecutor, where he worked under, first, Edmund G. "Pat" Brown, Sr., then Thomas Lynch. In 1958, the newly elected Governor Brown appointed him clemency and legal affairs secretary, and Judge Poole moved to Sacramento. One of the major challenges of that position turned out to be handling the death row case of Caryl Chessman, and Judge Poole relates eloquently the dramatic events leading up to Chessman's execution in 1960.¹

After three years as Brown's legal affairs secretary, Judge Poole was appointed U.S. attorney for the Northern District of California, serving as the district's top federal prosecutor until 1969. During that period he not only supervised other federal prosecutors and the law enforcement efforts of the office, he took on several battles himself. It was a period of disruptive social discontent--there were the nuclear protesters who set out to sail from San Francisco to Bimini Atoll to put themselves in harm's way; there were the Vietnam War protests and street riots; there were numbers of people being prosecuted for violating the Selective Service Act to avoid being drafted for the Vietnam War; and there were the Black Panthers.

Returning to private practice in 1970, Judge Poole joined the law firm of Jacobs, Sills & Coblenz. Six years later he was the first African

¹ For more information on the period, see Cecil Poole, Executive Clemency and the Chessman Case, an interview conducted by Eleanor Glaser in 1977, in "The Governor's Office Under Edmund G. Brown, Sr.," Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

American to be appointed to the bench in the U.S. District Court for Northern California. Then, in 1979, he was chosen to become a judge on the U.S. Court of Appeals, Ninth Judicial Circuit. He served on the appellate court for seventeen years, taking senior status in 1996. He died in 1997.

Throughout his life, Judge Poole interested himself in civil rights, in improving education, in organizing equal opportunities in employment and housing. He was a director of the NAACP Legal Defense and Educational Fund and a trustee of the National Urban League, as well as being active in the American Bar Association and the San Francisco Bar Association.

In his oral history, he not only recalls events but he discusses thoughtfully some of the issues that have been crucial to legal history: mandatory sentencing, the death penalty as a deterrent to crimes, extradition. Politics provided a major force in his life, and he talks about such historic personages as Pat Brown, Thurgood Marshall, and John F. and Robert Kennedy.

Judge Poole was interviewed in 1993 in eleven recording sessions in his appellate court chambers, then in temporary location while the courthouse was being renovated. His office was full of pictures that had not been hung, framed awards and certificates propped against walls, and files stacked on chairs--he hadn't had time to move in properly. During the interviews, he loved to get up to locate this or that paper or picture that he was discussing. And he was a superb raconteur, with a flair for the best way to tell the story.

Unfortunately, Judge Poole was never able to review the draft transcript of his oral history, being too occupied with his other responsibilities. I have reviewed it and clarified some of his remarks. Our thanks go to the Northern District Court History Society, under whose aegis this oral history was undertaken, and to the Ninth Circuit Court Historical Society, which also supported the project. Loris Eldredge, now-retired secretary at the appellate court, transcribed most of the tapes. Special thanks are due to William Coblentz, longtime friend and colleague of Judge Poole, who wrote the introduction, and to Patricia Poole, the judge's daughter, who helped to move the project along. Mark Franaszek did the charcoal drawing that serves as a frontspiece.

This interview is part of the ongoing documenting of California history by the Regional Oral History Office, which is under the direction of Willa Baum, Division Head, and under the administrative direction of The Bancroft Library, University of California, Berkeley.

Carole Hicke
Project Director

November 1997
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

November 14, 1997

Judge Cecil Poole, Pioneering Black California Jurist

Judge Cecil F. Poole, 83, a senior judge for the U.S. Court of Appeals in San Francisco and former U.S. attorney, died Wednesday night from complications of pneumonia after a long illness.

During a distinguished legal career that spanned 55 years, Judge Poole served as a military attorney, a federal labor relations lawyer, a prosecutor for the City and County of San Francisco and the U.S. Justice Department, a legal secretary to the governor of California, a private attorney and federal judge at the district and appellate levels.

He was the first African American ever appointed U.S. attorney for the Northern District of California and also the first black judge appointed to the U.S. District Court in San Francisco. In recognition of his long history of service to the law and society, he was inducted into the Charles Houston Bar Association Hall of Fame in 1996.

Those who knew him well said the judge's death is a tremendous loss for Bay Area legal circles and the general public.

"Judge Poole was a true pioneer with a career full of 'firsts,' as well as a great jurist," said Thelton E. Henderson, chief judge of the U.S. District Court in San Francisco.

"He was also an invaluable mentor to so many, including myself. When I was first appointed to the bench, Judge Poole took me under his wing, and I will never forget the friendship and guidance he gave me over the years."



CHRONICLE/1963

Poole

Attorney William Coblentz, who first came to know Poole well when the two men shared an apartment in Sacramento in the early 1960s while working in the administration of Governor Edmund G. "Pat" Brown, said the judge was a man of "wisdom, generosity of spirit, respect, fairness, compassion and brotherhood."

"He believed in the words of Huddie Ledbetter," Coblentz said. "We are in the same boat, brother, and when you shake one end, you are gonna rock the other."

Judge Poole was born in Birmingham, Ala., in 1914, and was raised in Pittsburgh, Pa. He earned his bachelor's and law degrees from the University of Michigan in the late 1930s, then took his master's degree in law at Harvard in 1939.

He was admitted to the Pennsylvania bar in 1940, and joined the U.S. Army Air Corps in 1942, serving for three years as a first lieutenant in the Judge Advocate General's office.

In 1945, Judge Poole moved to California, where he served as a staff attorney for the U.S. Labor Relations Board until his admission to the California bar.

In 1949, Judge Poole joined the San Francisco district attorney's office, working as an assistant prosecutor under Brown and Brown's successor, Thomas Lynch.

Judge Poole spent close to a decade as a county prosecutor and was appointed gubernatorial clemency and legal affairs secretary after Brown was elected governor of California. In 1961, then-President John F. Kennedy appointed him U.S. attorney for the Northern District of California, where he supervised federal prosecutors and law enforcement efforts over one of the state's largest federal jurisdictions.

Judge Poole served as Northern California's top federal prosecutor until he returned to private practice in 1969. But in 1976, then-

President Gerald R. Ford appointed him to the U.S. District Court bench, where he continued to serve until 1979, when he was appointed to the Court of Appeals by President Jimmy Carter.

After 17 years there, Judge Poole assumed senior judge status last year.

During his tenure on the federal bench, Judge Poole was involved in a number of major court decisions, including a key ruling on voter representation for Mexican American citizens in 1994, a decision upholding limits on donations to political campaigns in 1990 and a critical state political reapportionment case in 1988.

He also saw his share of historical criminal cases and was a member of a three-judge panel that reviewed the 365-year sentence imposed on convicted spy Jerry Whitworth in one of the most shocking espionage cases in the 1980s.

In addition to his years as an attorney, prosecutor and jurist, Judge Poole also served as director of the NAACP Defense and Legal Education Fund, a trustee of the Urban League and in various educational and professional posts.

He was preceded in death by his wife, Charlotte Crump Poole, a longtime San Francisco civic leader and former publicity director for the NAACP in New York, who died in 1990. His daughter, Gayle Alexandra Poole, also died before him.

He is survived by another daughter, Patricia Mary Poole, and a granddaughter, Nicholle Charlotte Allair, both of Novato. He is also survived by a nephew, Fred Morsell of Emigrant's Pass, Mont.

Memorial services are pending. The family requests that contributions made in memory of Judge Poole be directed to the donor's favorite charity.

— Bill Wallace

I BACKGROUND

[Interview 1: January 25, 1993] ##¹

Parents, Early Childhood, and Education

Hicke: Let's just start with when and where you were born.

Poole: All right. I was born on July 25, 1914, and in the city of Birmingham, Alabama. I was one of three living children. My mother had another child, another baby, who had died amid one of those flu epidemics that they had in those days, and they didn't apparently know how to do very much about it.

My recollections are fairly faint from that period of time, because when I was four years old, my parents moved from Birmingham to Pittsburgh, Pennsylvania.

Hicke: Let me just stop you right there and ask you a little bit about your parents.

Poole: Yes. Both of my parents had had what was in those days called a normal school education; a normal school education was one that I think went just a little beyond what would be a high school education now.

Hicke: Teacher training sort of thing?

Poole: Yes, it's like that. My mother taught for a short time. She was having babies, so she couldn't keep it up. My father was an assistant principal in Birmingham. It was all segregated in those days.

¹## This symbol indicates that a tape or tape segment has begun or ended. A guide to the tapes follows the transcript.

Hicke: Of an elementary or high school?

Poole: Elementary, yes. I think it was elementary; I'm pretty sure it must have been.

But he had differences with the superintendent. The superintendents of all schools were--if they had them at all, they were white. And he had some differences with him, and so he retired.

Hicke: And that's when you moved to Pittsburgh?

Poole: He decided to get out of the South.

We moved to Pittsburgh. The only recollection of that I have is that--it was what I later on came to understand to have been on the train--the coaches were segregated. They would take a normal day coach and they would have a partition. On one side of the partition would be the white passengers; on the other side of the partition would be the non-whites.

I don't really remember this, but what I do remember is that my mother had some kind of a fur or fur-like coat, and she had her pillow. I was not quite four, but I slept on the seat, and with this coat over me.

Hicke: This was the train ride from Birmingham to Pittsburgh?

Poole: Yes, I can remember that part of it. And I can remember that when we got to Pittsburgh we were met; my mother had some relatives who lived in Pittsburgh. They met us somewhere. I can't tell you that it was in the station or whether we went to their house.

We lived in several places in the city. I went to the public schools. I had one brother.

Hicke: And his name was?

Poole: He was older. His name was William. My father's name was William.

Hicke: What was your father's full name, and your mother's name?

Poole: My father's name was William Thomas Poole, and my mother's name was Eva Louise Gayles.

Hicke: Do you have a middle name?

Poole: Yes, my middle name is Francis.

Hicke: You had another brother?

Poole: No, I had only one brother and one sister. Her name was Marjorie Ellen, and I was the youngest in the family. She eventually married one of her high school sweethearts, John Morsell.

Hicke: And did your father take up a new position as a teacher?

Poole: No, he never taught anymore. He went into business. The Pittsburgh schools were not segregated. That was one of the reasons why he moved there.

I can remember pretty much my school days.

Hicke: Oh, tell me about them.

Poole: I can remember the kindergarten days and all the little nursery rhymes that we used to sing, "Sing a song of sixpence, a pocket full of rye," and things like that. And first learning to write. I had trouble learning to write. I made my characters backwards; it was one of those things.

But I learned to read early. Before I was old enough to go into the kindergarten, I could read. My mother and my father were meticulous about teaching us all to read.

But they didn't teach me to write, and so I had a hell of a time writing. I think what the teachers were teaching was the Spencerian, and that was--my motion of writing didn't go that way, it went the other way. And my characters slanted this way--
[demonstrates]

Hicke: To your left.

Poole: Yes, to the left, and they indicated that was absolutely forbidden. So I had a tough time, but I finally mastered how to do it in a way that was acceptable to them. Except one thing: I never, ever learned to write, make a written "f," the letter "f."

Hicke: Script, cursive.

Poole: Yes. I can't do it to this day. [laughter]

Hicke: Well, I think that's a minor flaw. Is that why you don't use your middle initial so much? Or maybe I just haven't seen it.

Poole: I use it, yes.

Hicke: And that would be a capital letter anyway. So you write everything else and you print the "f." [laughter] That's great.

Poole: I just didn't have that knack, and I don't have it. I think at one time I could do it, I could swing fairly well into it, but it doesn't look like an "f." [laughter]

Hicke: Well, it sounds like you enjoyed school, though.

Poole: Oh, I did. I did like it and had some very good friends. The teachers were pretty good teachers, as I remember them. My recollection of them is that they were patient and interested in us. You know, they used to read the Bible in school in those days too.

Hicke: That was part of your lessons?

Poole: Sure. When you got old enough. When you were in kindergarten they didn't do it, but when you got to about the third grade, sure they did. They all did that. As a matter of fact, I found myself interested in the stories that they spun from the Bible, Solomon. And the Old Testament was great stuff there. Well, they would tell these stories, and I read a lot of it, and I became really interested in the Bible as literature. When I was in college, I took a year's course in that, and I found that one of the most fascinating courses I've ever taken. Just as literature.

But if you spend a lot of time on the Bible as literature, you can't help but escape the philosophical aspects of it, too. That led me eventually into a great love of English literature, English poetry, and then the poetry of other languages. Because I remember when I was taking this course in English literature, the destruction of Sennacherib was something I've never forgotten to this day. I didn't remember the name from my grade school, but I remember the story. This is the Assyrians.

So when we were doing this when I was in the third grade, you were just quiet. You didn't ask a lot of questions about it. But I would go home and I would ask my father about that. He would point out--he would locate that part--

Hicke: On a map?

Poole: --where--they used to call them the children of Israel, in Egypt. They were warned to, I think it was to put the lambs' blood on the door or something like that, and those that didn't have it were in trouble.

Hicke: Did you ever get a chance to travel to some of the bible lands?

Poole: No, I have never been to Africa, the African continent. But I thought it was pretty good stuff, you know, that the Lord was able to handle this thing. [laughs]

"Then the Assyrians attacked, and the Assyrians came down like a wolf on the fold." Oh, hey. That used to just make me get chills up and down my back.

Hicke: That's one thing I think the King James version probably has, is that beautiful language.

Poole: Yes, "...they sure then came down like a wolf on the fold, and his cohorts were gleaming in scarlet and gold, and the sheen of their spears was like stars on the sea where the blue wave rolled nightly on deep Galilee." Oh, I know the whole thing. That's one of the things I don't forget.

But I did like that. I liked going to school. I had a tough time with mathematics at first, so tough that my teacher talked to my mother and suggested to her that there were people who would give you special training on that if you wanted--but there was a charge for it. My mother and father said that they wanted me to do it, and if that's what it was, it was fine. So they did.

I got over that hump. I didn't have another difficulty until I got into high school, and then I had some difficulty with algebra.

Hicke: I can understand that! [laughs]

Poole: Yes, I had some difficulties with algebra. But they had special courses that you could take after school, and there was no charge for it. I did that, and I learned the knack of it. The next thing was geometry, and I sailed through geometry. I loved geometry. But algebra, I had some trouble with it.

I went to high school, which was, oh, I suppose, maybe about a half-mile away.

Hicke: Do you recall the name of it?

Poole: Schenley High School. The grade school I went to was the William H. McElvey School.

Hicke: Did you have music or any kind of after-school sports, other activities?

Poole: Oh, yes, I did. In high school, I was on the track team, and I also had violin. I still have it.

Hicke: Do you still play?

Poole: No, no. But it's somewhere around here.

Hicke: You had lessons, or did they--

Poole: Yes. I had a teacher named Mr. Beelhart.

Hicke: Oh, good! You remember everything.

Poole: Mr. Beelhart was the teacher, and he lived in a part of Pittsburgh called Bellevue.

I did pretty well in school. I made the honor roll. I enjoyed it, I liked it. I think I had a pretty normal growing up.

Hicke: Let me ask you something about your family activities. Did you have birthday celebrations and--

Poole: Oh, yes.

Hicke: --outings or--what did you do for--

Poole: Well, they had some of these very large amusement parks in and around the city. We'd go to them on holidays and things like that. My father had two brothers in Chicago, and he would sometimes take us over there. We would spend about a week over in Chicago. Once or twice, we went to kind of a summer resort that I remember in Pennsylvania, about 100 miles away from Pittsburgh. It was like a resort, and we would go there.

Hicke: On a lake?

Poole: Yes, there was a little lake up in the Pennsylvania hills.

As I say, I had a lot of friends.

Hicke: Did you have any other relatives that lived right in the--you did have some that lived in Pittsburgh, right?

Poole: But they died. They were my mother's aunt and uncle, and they died. But I had a lot of friends in Pittsburgh.

Then my father wanted to make sure that we got a good education.

Hicke: Yes, they sound very education-oriented, your parents.

Poole: Yes, and we had lots of books and things of that sort. He loved opera, so we used to--I didn't go to opera as much as I used to listen to the regular Saturday broadcasts of the Metropolitan [Opera].

I acquired a real love of music. Not so much opera as he did; I liked the symphony, and I still do. In fact, Charlotte and I had--well, she died nearly three years ago. We had symphony tickets. First it used to be the symphony played in the Opera House, and then when they built Davies Hall we continued that. So I guess we had symphony tickets for more than twenty years.

Hicke: You go back to Seiji Ojawa on the--

Poole: Oh, yes. Seiji, he was too--he'd throw that black mane around--

Hicke: Dramatic.

Poole: [laughs] And [Herbert] Blomstedt is kind of a workman. And of course, they built Davies Hall now. We still have seats; they're good seats, too. They're loge seats, and they're excellent.

But in her last days when Charlotte was too ill to go to the symphony, I would most of the time trudge by myself, and then it got to the place where I didn't really want to go. We used to have the twelve concerts. I cut them down to six, and much of the time I didn't use the tickets.

But I've been thinking about it in the last three or four months. I've decided that I am going to go over there to the business office and tell them I want my old seats back, and I want the full thing, and I'm going to listen to them. And once in a while I'll take somebody. I'm going to do it.

Hicke: Yes. I think if you don't have those series tickets, you really tend to not go at all.

Poole: Yes. Well, I've had the tickets, but they were the short ones. But I went, and I took a friend of mine who had never heard "The Messiah." That was great. Then, I had--one of my former associates when I was practicing law--as a matter of fact, he got me into entertainment law.

Hicke: Who is this?

Poole: Bob Gordon is his name. In fact, he'd been teaching a course over at Berkeley. It would be a course in the law school, I think, and it would be on music and the practice of music law. [interruption]

Hicke: Well, we're just unwrapping a platinum record that says, "Presented to the Honorable Cecil F. Poole by Warner Brothers Records to commemorate more than one million copies of the Doobie Brothers 'Toulouse Street.'"

Poole: Yes, they were a client. They had some major litigation against their former manager, who had deserted them when they were young and decided they didn't have any future. Then when they became famous--this is the one that took off for them.

Hicke: Platinum records are pretty rare.

Poole: And he decided it was not a divorce, it was only a companionate separation that they had had, and so he wanted to come back to share. He was asking for a couple of million dollars and that sort of thing.

Hicke: Oh, that's impressive.

Poole: I was a tough guy with him, though. I have a gold one, too.

Hicke: Are you going to put that up on the wall?

Poole: It used to be on the wall at the other building, but I haven't gotten it up on the wall here yet.

Hicke: Okay, well let's just go back to high school a bit. Were there any other courses that you particularly enjoyed?

Poole: Yes, I liked languages. I liked Latin. I took two and a half years of Latin. I went through Virgil and Caesar and--

Hicke: "All Gaul..."

Poole: Yes. And as a matter of fact, when I went to college, I took some more Latin--oh, I also took French in high school. I took the Latin lyric poetry course. Then I got to the place where some of the footnotes were in Greek, so I took six weeks of Greek so that I could understand what the footnotes were in the language.

Hicke: Was that in high school?

Poole: That was in college. I took Latin and French in high school. And woodwork. But I knew I was going to be a lawyer. In the first week--the junior high schools were just coming into vogue then. They built a junior high school maybe 300 yards away from my house. But I had already "graduated" from McElvey School, so I had a choice: I could have left McElvey School and gone to the junior high school, which used to take them through the ninth grade.

Hicke: McElvey probably went through the eighth grade?

Poole: Through the eighth. I didn't want to. So I stayed there, and we graduated. Our graduation feature was the story of Rip Van Winkle. [laughs] That was a great song.

So I went to Schenley.

Hicke: For ninth grade.

Poole: For ninth grade. Then the first week or two, the homeroom teacher had each of us to write down what she or he--

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Hicke: --you said the home room teacher made you write down--

Poole: What we wanted to do when we got big, when we were grown. Someone wanted to be a doctor, someone wanted to be a carpenter, someone wanted to be an automobile mechanic, whatever it was. And I said I wanted to be a trial lawyer.

Hicke: How did you know?

Poole: Well, my father had had some litigation, and he had a lawyer. They were arguing over how much money was due--I can't remember now whether it was due from him or to him--but he had a lawyer, and everybody knew him. He was very popular. His name was William G. Stanton. He was a little, short fellow in size, but he had a booming voice.

One day, I guess my father had this case and Mr. Stanton was representing him. They were going so well that I said to him--at night he would tell us what had happened that day--"Gee, I'd like to go." So my father said well, maybe he would take me, and my mother said, "He shouldn't miss school." My father said, "Oh, he won't miss much." My mother didn't think much of the idea, but my father said I could go with him.

So I went to the big courthouse down on Grant Street in Pittsburgh. It looked like everything was built for giant people, you know.

Hicke: Sure. Very imposing.

Poole: I listened to it, and I thought Mr. Stanton was something. He would parade like a peacock around that court. He would make a statement with his hands up in the air, and he would argue, "I object, Your Honor!"

Hicke: Put on a real show?

Poole: Best show I had ever seen in my life. [laughter] So I thought about that. I knew that lawyers had cases and they went to court and all that, but I had never been in a court.

So I told Mr. Stanton when they had a recess or something that I thought it was very good. I enjoyed that. So he said one day, "I'll tell you what you do. Some time when your father can, I'll take you to one of the other courts." This was a civil case that they had. "I'll take you to one of the courts and you'll--" because we used to see things in the paper about people were being tried.

So he did. They wore these robes. That was hot stuff. So as I say, when we wrote this thing-- He was a trial lawyer; that is how he was described, and that's what I wanted to be.

So they had school counselors, and the guy said, "Well, you know, if you really want to be a lawyer, you should take these classical things."

Hicke: This was high school?

Poole: High school. Sure. So I did. I took algebra, and I took geometry, and I took calculus. Then I took the languages, and then I took physics.

Hicke: You probably had the usual run of English and history and government and so forth.

Poole: Oh, yes. Yes, I liked that.

So the time came, I finished the Schenley High School, and then there was a question: what was I going to do? My father had always wanted to go to a university, but he didn't. He couldn't. In his mind, there were only three schools--there were three universities only: those three were the University of Chicago, the University of Michigan, and Harvard [University].

So when I was a junior, my folks took a tour. My brother didn't go on this, but my sister and I did. We went to Atlantic City, New Jersey, and we went to New York City, and we went to Boston. They had some old friends who lived there.

Hicke: In Boston?

Poole: In Boston, yes. So we went to Bunker Hill. I remembered the midnight ride of Paul Revere, of course. And then we went to

Cambridge. I was unimpressed with the masonry at Harvard.
[laughter] It just didn't do anything for me.

Hicke: All that red brick?

Poole: Yes, all that red brick there, and then some of the colonial--. So my mother said, "Well, one day, would you like to go here?" It was too far from home, that was one thing. So I wasn't terribly interested in that.

Well, my brother went off to school, and he went to the University of Michigan. He came back telling great stories of these romantic things, this awful fun they were having. And I decided that's where I would like to go.

He was four and a half years older. He finished school. He went there two or three years, and then he transferred to the University of Iowa. Why, I don't know. But he went to Iowa. But he told me so many great stories about high times at Ann Arbor that that's what I wanted. So my mother thought that I at least ought to make an application to a couple of schools, because if I didn't get into one, I'd get in the other.

I said, "No, I don't really think so." [laughter] So I went to Ann Arbor, and I thought if I didn't like it after I had been there for a while, I would think about going someplace else, one of the Eastern schools, like maybe Chicago or Harvard.

Hicke: You did get accepted and all that.

Poole: Oh, yes. I got accepted at Harvard, too.

Hicke: Did you apply to other schools?

Poole: I did apply. I applied to Michigan; I didn't apply to Chicago. I applied to Michigan, Columbia [University]--and I can't tell you why Columbia now, but I did--Michigan, Columbia, and Harvard, and I got accepted.

Hicke: Before we go on, let's talk more about high school. What about your summer vacations? Did you work or did you travel?

Poole: In the summer vacations, during the time I was in high school, I got a job working on a garbage wagon. So did Billy Eckstein.

Hicke: Billy Eckstein. He was your friend in high school, you said.

Poole: Yes. And Billy got me the job, working on the truck.

Hicke: Oh! Was he singing then too?

Poole: He had a good voice then, but you know, he was one of those--he would sing at parties or something like that. But I did that one year, and then my mother didn't think much of that job. So I gave it up.

One year I went to summer school. They had a summer school, and I went there. It was a lot of fun because you didn't have to do too much. Oh, I got into photography. I began to like photography, and I took a lot of pictures. Some of the pictures they printed in the yearbook.

Hicke: How did you get started on that?

Poole: Well, my mother went away on a vacation one year, and she brought me back a Kodak camera, you know with the bellows on it?

Hicke: Oh, yes.

Poole: It was just so great. She brought that camera to me when I was in my last year. I was still at McElvey School, the grade school. Up the street from me, there was a little girl with whom I was in love. Her name was Irma. I had this camera, and Irma said that her father had a camera. I said, "But this is a special camera."

So I took a picture of her, which didn't come out. [laughs] She was very disappointed, so she told her father about it. Her father was an electrician. He had a camera. He took one of her, and then told her to call me--we lived only about a block away from each other--and had me come over, and he took a picture of the both of us. So here we are standing up like this.

Hicke: Straight and stiff.

Poole: Yes. And he took this picture of us. She gave it to me. I kept it in my room.

Then I discovered that despite that act of devotion she really wasn't very much interested in me at all. [laughter] So I thought, well, the heck with that. But I never did forget my--I always took a lot of pictures.

One summer, I didn't do much of anything. One summer I went to summer school. One summer we traveled.

Hicke: And the other one was the work with the garbage?

Poole: Yes. You could only do that--because it gets very cold in Pittsburgh, very cold. So I did that.

And you know, what I remember also is going to parties where kids were sneaking off to smoke something which I later knew to be marijuana. I never--the only time I ever so much as puffed a marijuana cigarette was when I was in the district attorney's office, and [Governor Edmund G.] Pat Brown was then the D.A. He put me on a special assignment to work with the narcotics agents, and they would go down Mission Street, and they'd pick up some guy they knew to be a seller, and he would have some in his coat pocket.

So one of the policemen said to me, "Have you ever smoked one of these joints?" I said, "No." He said, "You never did?" I said, "No." He said, "Just try it." So he gave me the thing, and I took it and [pffff] it up, and swallowed it. [laughs] My eyes cried. That was the only time in my life that I've ever done it.

Hicke: And that was more or less in the line of duty.

Poole: By the police, yes. [laughter]

Hicke: When you said Billy Eckstein was one of your friends, what about other friends? Do you recall any of the others?

Poole: Sure. I had a number of good friends. I suppose my best friend was a fellow named Henry McCullen. Henry and I were friends from before either of us went to high school and still are, only I don't see him very much. But whenever I come to Pittsburgh, if he knows I'm coming, he'll try to set up a meeting with some of my still-surviving old friends from way back then in those days.

I can't think of anything that was terribly eventful. I remember when [Charles] Lindbergh flew. That was a great thing for us that he went in the Spirit of St. Louis. We talked about it for days.

Hicke: How about the economy?

Poole: The Depression came, and they would have bread lines. They also gave away a lot of apples. I don't know why, except that they were plentiful.

When I went off to Michigan, that was in 1932.

Hicke: So that was the worst of it?

Poole: That was very tough.

Hicke: Did it affect your friends?

Poole: Yes. It affected everybody. And times were just very tough. I never went hungry, but times were bad. See, what happened was, in the midst of the Depression, manufacturing went down low, and Pittsburgh--that part of Pennsylvania depended upon the steel and coal industries. It was very tough.

I remember--that was a bit later though, I guess--I remember a man who was thirty or forty years old, but he was a local intellect. He became a union organizer, and everybody said that he was a radical. I would see him periodically. When John L. Lewis was organizing the coal miners, and Phil Murray was organizing the Congress of Industrial Organizations and the steelworkers, this fellow, McKinney, was an organizer. I would see him, he would have been in a fight. But as I say, he was a very bright person. He told me that one of these days everybody was going to belong to unions. He said, "And then they're going to get those wages back up, and people are going to live better."

Hicke: Was politics discussed in your family? Were you ever involved in any politics?

Poole: Not a whole lot. They were discussed on a large, impersonal scale. I guess I wasn't troubled by politics when I was in high school, although a lot of the kids had family members who were much involved in it, and there was talk about it, I remember that. But I didn't have anyone who was involved in that. I would just read what they said in the Post-Gazette. Not all of it made a great impression with me.

But all of this time I knew what I was going to do, or what I hoped to do, anyhow. I sometimes thought about teaching. And to do that, then, of course you had to get a college education and you had to do all that stuff. I was really determined I was going to go to college. I really didn't question about it. I had good grades in high school.

Hicke: And it came easy for you, or fairly easy?

Poole: Yes, fairly easy. And particularly, I was always bolstered also by the literature things and the classical things, because I read them for myself.

Hicke: What did you read for your own pleasure?

Poole: We had the Encyclopedia Britannica. By that time, we had a pretty large house. On the third floor where my brother and I slept, we had what you'd call now a family room. We had our own music area

up there, and books on books on books. Everybody read books in my family.

It was a good, big old house we had. It was right over the hill from the University of Pittsburgh campus, and right over the hill from Schenley High School, too, going that way, and the campus was up this way. Incidentally, eventually the university condemned--took the house by eminent domain. They spread the campus out and my mother and father had to move.

But as I say, we had lots of magazines and lots of books and things like that. We had the complete works of Robert Louis Stevenson and James Oliver Kirwood. I had both the Latin and the English translation of the Aeneid. I knew the whole saga of the Trojan Wars.

I must say that, in that respect, not many of my friends shared that with me.

Hicke: I can believe that. Unusual.

Poole: And I had become already a frequent reader of the Old Testament. I wasn't much for the New Testament, but I liked the Old. These guys were fighting each other and doing things, and God was punishing them for doing it. [laughs]

Hicke: Good stories.

Poole: Yes, great stories. And I was encouraged to do a lot of reading, and to read different things. My father was a great reader.

Hicke: Did you have a library in the neighborhood?

Poole: There was a library--oh, sure, the Carnegie Library. There was a branch library about three blocks--oh, let me see. From where we first lived, it was about three blocks. So when I was just about five years old, they would have a story hour. I would go down, the little kids on little seats, we'd sit there and they would read the stories for us, and I used to like that.

One time someone tried to teach me to draw, but I never was very good at that. It didn't ever come out to anything.

Hicke: It's kind of fun, though.

Poole: Well, when I really was small, I guess I did enjoy it, because I used to mark up a lot of paper. But when I tried to get serious in reproducing, I didn't do it. So I decided that wasn't going to be it.

And then I was going to tell you, I became very fond of music, classical and jazz and whatever it was.

Hicke: And you were playing the violin.

Poole: Yes.

Hicke: Did you play in concerts or--

Poole: I played in the high school orchestra for a long time. But I really was never that good on the violin. Other kids were really tremendous on it. I used to get mad with them, they were so good. [laughter] But enough for me to be able to--and my sister played the piano, so we could do pretty well.

Hicke: Yes, that's a nice combination.

Poole: And I was going to say, my brother went off to Michigan, and then to Iowa. My sister went off to NYU [New York University].

Hicke: Well, I think that might be a good place for us to stop today.

Poole: All right.

A Cameo Appearance: Judge Robert Peckham ##

[Interview 2: March 16, 1993]

Hicke: I would like to start this afternoon by asking you for some recollections about Judge [Robert] Peckham. Since he has just died and we cannot complete his oral history, we are asking others about him. Could you tell me where you met him first?

Poole: I think I met him first in connection with an organization that was called the Young Democrats. They had various political meetings. At this time, the Franklin Roosevelt years were over, of course.

Hicke: This was probably the late forties?

Poole: This was in the late forties. Harry Truman was the president, and in 1948 he had a memorable victory over Tom [Thomas] Dewey. The ticket was Dewey and Governor [Earl] Warren. That's where I met him, because Bob was an assistant United States Attorney. I didn't come to California until January of 1946, and I met him sometime after. I can't say exactly what year it was, but I remember

meeting him, and I have the recollection because he was always very courteous and responsive.

I had been working for the Office of Price Administration. My wife and I came to California in early January 1946. I was still in uniform. Through a mutual friend back East, we had been introduced to the regional director of the West Coast Office of Price Administration, whose name was Ben C. Duniway. Ben Duniway gave me my first job in California. In that connection, I met a lot of people. Sometime around then, I met Bob. The Price Administration was on its last footing, and I stayed with them for about a year and a half. But I knew that people were tired of price controls, except for the retention of rent control.

II PRIVATE LAW PRACTICE, MILITARY SERVICE, AND THE OPA

Bar Examination and Admittance to Courts

Poole: I resigned from the office and decided I would do something. I don't know now why I had the nerve to do it. I decided I would open an office for the practice of law. I had taken the California Bar and I had passed it. That was somewhat to my surprise, because in 1946 I had been out of school a long time. But I took it and I passed.

Hicke: Did you study up beforehand?

Poole: I did. I was working at that time for the Office of Price Administration, so I didn't have time to go to a regular course which they had. It was a teacher named John Bussey, who was quite a scholar, and he had a bar course. I often wasn't in town when it met. I would be in Los Angeles, I would be in Seattle, or someplace. John Bussey told me that if I wanted to, he would give me an hour or two on Saturdays to make up that course. So I did, and I took it, and, anyhow, I passed the bar. And shortly after-- I guess maybe three or four months after I passed the bar--it was 1946, and I was admitted to the District Court. I had been admitted to a district court already because I was a member of the Pennsylvania Bar when I came here. Pennsylvania had kind of an odd situation. You got admitted in your home county first. That was the bar of this county, and they had nothing to do with any integrated bars. You could practice law in Pittsburgh, Pennsylvania with the Allegheny County Bar.

Hicke: So that would apply for the state?

Poole: You took the state's examination, but you got admitted first to the Courts of Common Pleas and the lower courts. Only when the Supreme Court came around, which they would do about four times a year, then you could get admitted to the Supreme Court, or you could go to Philadelphia if you wanted to, or to Harrisburg, where

the seat was, and get admitted up there. But unless you had something to do with the Supreme Court, there wasn't any need for you to do that, because you were going to do your practice in the local courts--the trial courts.

Hicke: The state supreme court you're talking about?

Poole: The Pennsylvania State Supreme Court. I've got this old diploma. It's right over there, I think. Hold it just a second. This is my college diploma.

Hicke: "Bachelor of Arts, 1936, from the University of Michigan." And this is the Supreme Court of Pennsylvania, 1940. You were admitted in 1940.

Poole: Yes, 1940, that is correct. So, anyhow, I decided to do that. In those days, the district court would appoint people to defend persons who were indigent. You didn't get paid. So, I did some of that because I was interested in the federal practice anyhow.

Hicke: This is in Pennsylvania?

Poole: No, when I got here. In Pennsylvania I worked for a small office. There were four lawyers in it.

Hicke: Brown and Jones?

Poole: Brown and Jones. Homer Brown and Richard Jones and a couple of lawyers who left shortly after I came there. I made the third person. I was an employee of them, of course, and did all the dirty little things that you had to do.

Military Service: Trials and Tribulations

Poole: I liked trial work. When I was an enlisted man up in New Hampshire, I was, of course, a member of a bar, and so I was called upon to defend some of the soldiers in courts martial, because though there was a designated trial judge advocate and a designated defense counsel, enlisted people mistrusted them and thought that they would be delivered into the hands of the Philistines if they took their counsel. So they went through what they called a Form 20; every soldier had a Form 20 that listed who he was, date of birth, where he came from, his schooling, and what his occupation was. That way, theoretically, they could assign you to something that would be befitting your educational skill. Well, as you may know, in those days the armed services were

thoroughly and entirely segregated. So I was working for the National Labor Relations Board. I told you that, didn't I?

Hicke: Yes, you did.

Poole: I got my draft notice while I was in Washington with the NLRB [National Labor Relations Board], and they sent me to the North Atlantic Wing of the Air Transport Command based in Manchester, New Hampshire. That was about, I guess, probably forty miles from Boston. I was assigned to an all-black squadron, which was primarily one that did labor work.

Hicke: You were doing some courts martial?

Poole: Yes. Not right away. What really happened was, there was a soldier--a Caucasian soldier--who got into a tremendous thing with his commanding officer, and they were out to really take his hide off. He didn't want the defense counsel that was selected for him to defend him, because he felt that he had no chance. So they went through these forms. These forms were coded by having holes in them at certain places. And where you could find this long needle to go through there, it would pick out people, so they could see who on there had training.

Hicke: They found you.

Poole: I became a staff sergeant very quickly. My commanding officer said, "I'm not going to let you hang around as a private." So within about four or five months I was a staff sergeant. My commanding officer came and said, "The commandant of the base wants you come up to headquarters." And I said, "What have I done?" And he said, "What they want you to do is they want you to defend somebody from one of the other outfits who is in trouble." So I went up there, and they explained to me what it was.

The base trial judge advocate was a fellow named--I've forgotten his first name. His name was Oberg. Major Oberg explained to me that this man had really been a hard person to deal with, that he'd been in trouble before, and he had threatened his commanding officer. In fact, he was a big, powerful guy. He said he rejected the defense counsel. "And so we looked up these names, and we found your name and four or five others." He took this to him, and he looked at it, and he said, "Hey, who is this guy?" And he said, you know, "This is not a white noncom?" Major Oberg said, "He's not," and he said, "That's the one I want." So, I got the manuals and the specifications and all that, and I went to the trial.

I realized that a court martial is not like a courtroom. You had to exercise some discretion as to how you objected to things. I decided that I wasn't going to object to anything that wasn't important. If it was important, I would; and I did make some objections on several occasions, much to the disgust of the trial judge advocate. There was a law judge. They always had somebody on a court martial who was called the law judge, and he may or may not be a lawyer, but in this Grenier [Field] appeal he was. So several times, he sustained my objections. They convicted this man, let me tell you that. There was no way in the world that he was not going to be convicted. I think there were three specifications. They used to have the charge, and they'd have the specification that underlay a charge. One of the specifications they dropped.

Hicke: Thanks to your help?

Poole: Yes.

Hicke: So that was a success.

Poole: Oh yes, and he was very glad. They sent him to jail for three years. They had said he was looking at fifteen. But he got three years in jail and a dishonorable discharge and so forth. He asked me to come down to the stockade shortly after that. I remember he put his hand through--he was in the cell, and I was going to shake hands, and there was a sentry on duty, and he said, "No, you can't touch him. But wait a minute, I think you're allowed to have him come out of there and into the conference room." So I went into the conference room with him and he thanked me. He said, "I'm never going to forget this." He said, "Look, I'll do that time, don't worry about me, I'll do that time," he said, "but boy," he said "that was sure some--" He said, "You should have seen that major's face when they sustained your objections."

My fame kind of spread rapidly on the base, and I got several other calls to represent. But I became selective. I knew not to get into too much of that. And besides, I did have a responsible occupation. Grenier Field was the headquarters of the Northwest Base of the Air Transport Command, and its mission was to ship planes and supplies overseas to England. The planes would get loaded up at Omaha, Nebraska--they were huge cargo planes--and they would bring them to New Hampshire, and there they would load them with all the things that had to be loaded, and they had to be precisely loaded because of the weight. So I had charge of a crew that loaded these things.

Hicke: Let me just interrupt you a minute and ask you about the courts martial again. Don't they have a pretty solid case before they even bring a court martial, so that defending must be difficult?

Poole: Well, they did have a solid case. The commanding officer testified. And I remember I asked the commanding officer--I said, "I'm informed, Captain, that this wasn't the first time there had been some altercation involving this soldier." He said, "I wouldn't call it an altercation," he said, "I called it a publication." And I looked at the law judge and I said, "I'm not sure that's a responsive answer," and the law judge said, "It isn't." He said, "Captain, can you answer the question?"

Hicke: Was that true of the other people you defended too, that they had a really strong case?

Poole: I think, altogether, I did four. On one case what they did was they came with the proposition that if he would plead to this, they would forget the rest of it, and he did. On the other two, they were hopeless. They could not possibly make it, and so what I did was I worked out a plea. As I say, I had other things to do on the base. Eventually, I went off to Officer Candidate School. I may have told you about that.

Hicke: I don't believe so.

Poole: I went to Officer Candidate School; they called it the Air Force Administrative School, in that that would distinguish it from the pilot training school. They had just moved from San Antonio, Texas, to Montgomery, Alabama.

Hicke: I'll bet you didn't look forward to that too much.

Poole: That bastion of ignorance. But I got along well after my initial problems. I had been there about three weeks when I inquired--and I was the only black person in the class. In fact, in the school itself there were two others. They didn't have any other schools.

One morning we were told we were going to go to what they called aquatics. That's a fancy name for "get your swimming training." So, we went there and we were in the water--some guys couldn't swim at all--and a jeep drove up, and in the jeep there was a young tactical officer. He talked to the person who was in charge of the training for us and the person called me--they had to call everybody mister down there--"Mr. Poole," he said, "the lieutenant wants to talk to you." So I got out of the water, and I wondered, To what do I owe this honor?

The lieutenant was from Malden, Massachusetts. I can't remember his name, but I can see him. He said, "Mr. Poole, the commandant has ordered that you and your two comrades"--now you understand these guys are ahead of me in school, so I'm not a comrade to them--"have your aquatics training elsewhere." Here's what it was. This was at a place called Maxwell Field, Alabama. They had long, long runways for what were the largest bombers in the world, the B-29, that split Maxwell Field into two. On the one side was the field, the administrative offices, the barracks, the cadet barracks, and swimming pool and recreation facilities and all that. On the other side of these runways was where there was a black labor battalion. This battalion had its own swimming pool, its own barracks, its own mess hall, its own theater, and so they had no occasion to be on the other side of the runway unless they were on assignment of some sort.

It was at this place that the tactical officer [ordered us to swim]. I had seen it, but I had never been over there. I had only been there two or three weeks. I said, "Well, why that?" He said, "Why? Because the commandant has ordered it." I said, "I won't do it." He said, "It's not my order. I know how you must feel about it. I just have to tell you what the commandant said." And I said, "I won't do it." He said, "Anyhow, the commandant wants to see you." So I dried myself off and put on my uniform and we drove over to the commandant's headquarters.

When I got there, to my surprise, these other two black soldiers were there. They were ahead of me. I didn't know what they were doing there. I said, "Why are you here?" They said, "Well, I guess they're going to tell us what they told you." They had us come inside, and the commandant was sitting at this long desk, and on each side there were a couple of training officers with him. He looked at me and said, "Mr. Poole, I understand you have expressed some dissatisfaction with our aquatics program." This is where I made a mistake. I guess I felt so humiliated that I didn't use my judgment, and I said something flippantly to him. I said, "No, sir." He said "You didn't?" I said, "No, sir, I don't know what it is yet." It didn't go over very big. So he said, "The order is that you and your comrades"--and that used to make me shrink because it ran roughshod over the whole thing. You know, you saluted these guys. He said, "I understand that you said you would not participate in it." I said, "Sir, what I said was that I think that order is wrong, and I think it is a humiliating order, and I told the tactical officer that I would not obey that order." The commandant almost came out of his chair. He said, "What do you mean you won't obey that order? This is an order, and when you get an order, you obey an order in the military." I said, "I think, sir, that is so, unless the

order is so offensive that it can't be a valid order." I just stood there.

And then he asked the other two how they felt about it. And each of them said, well, he didn't think it was right, but it was an order and he would obey it. Then he came back to me and said, "Now, you see what your colleagues said. What about you?" I told him that I didn't think they should be responsible for what I said and did. If they felt differently, okay, but I didn't, and that was the way I felt about it. So then he said--he became conciliatory--"What were you in civilian life, a social worker?" I said, "No, sir." And he said, "What were you?" And I said, "Well, I was an attorney for the National Labor Relations Board in Washington, D.C." "Oh, well," he said, "you came into the service to help your people, didn't you?" Mistake number two was I said, "No, I came in because I was drafted." Oh, he didn't like that. I could have done without that, by the way. He then said, "Well, don't you think you'll be more help if you get a commission? Can't you do more for your feelings if you get a commission than if not?"

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Poole: He said, "Well, this is an order, and if you disobey that order, you will be court martialed, do you understand that? I said, "Yes, sir, I understand that." And he said, "We'll put a court martial together before you can turn around." I said, "I would make one request. I would like to see if I could get counsel of my own selection." I named two people. One of them was Thurgood Marshall. He didn't know Thurgood Marshall from a hole in the head.

Then he became conciliatory again, and he said, "Maybe what you ought to do is maybe you should resign from the academy here." And I said, "Sir, if I did that, I could never prove that I would otherwise have been able to finish this training." I said, "I don't think I'm going to have any trouble with the academic or the physical part of the cadetship here, and I won't resign. I mean no offense to you, but I'm not going to resign. I think this is wrong; I feel humiliated; and I am a soldier. I have a dilemma. I mean, how far can I go? I don't know. I need some legal advice." He asked me some more questions about where I came from, what I did and so forth, and my education.

Then they retired and left us standing there. They went into the commandant's inner office. My two comrades, as he had put it, were standing. When he asked them about it and they said they would obey if it was an order, I had said, "I don't speak for them. And I hope that nothing that I say or do is going to

prejudice them, but their feelings are not mine. I will be responsible for my own feelings, and I hope that they will not suffer at all by it." They said, "What can we do?" I said, "Well, I don't know, but there is no way that I'm going to do this, and I guess you can say goodbye to me after a while, because they'll sure put me in the stockade, but I'm going to do so." So they dismissed those two, and then I stayed there by myself.

Then one of the sergeant majors came out of the office and said, "Mr. Poole, you are to go to your quarters and remain there until further notice." I said, "Is this what you call house arrest?" "Well," he said, "I can't answer that for you, but the commandant just said go to your quarters and remain there." So I went there. I guess I stayed there for an hour and a half or so. Then this same sergeant major came to my door and he said, "Mr. Poole, have you had lunch?" It was past lunch by that time, and I said, "No, I have not." He said, "Well, you're to go to the cadet lunch hall and have your lunch." I said "What do I do then?" He said, "You're to rejoin your class." And I said, "Oh, just like that?" He said, "That's all I know." [Laughs] So I went and had something to eat and then I joined my class.

Not all of those in the class were friendly or anything. I didn't have anything to do with a whole bunch of them. I had a few friends there. Word had spread that I had been pulled out of the water, and I told them what it was. So that was it. During the entire time that we were there, to and including the day we got our commissions, we never went into the water. We never did the aquatics--never, ever.

My two comrades finished and left me. I was the only black person there, but I got along all right. I did very well in the athletics, except for the fact I was skinny and physically at some disadvantage, but I could run. I could outrun most everybody in the class, so I got along fine. As a matter of fact, when I finished I think I was the fourth on the physical list, and I was third or fourth on the academic list.

About a month after I had this thing with the commandant, I went into the cadet recreation hall, where you could play ping pong. They had sofas, and sometimes a soldier would have his girl friend or some friend there, so I would go there with them. And that same tactical officer came over to me and said, "By the way, Mr. Poole," he said, "I want you to know if you want to go to the base on the other side of the runway," he said, "all you have to do is call the motor pool. They have been given instructions. They'll send a jeep with a driver and take you over there. Stay as long as you want to stay." And I thanked him very much.

So I was telling a couple of my close friends about this and kind of laughing, and one of them said, "Hey, hey, we've got us a car!" [Laughter] So on several occasions, I called a car from the motor pool and we would get in the car and we would drive around. We would get on the roadway and meet some young officers. They didn't even look at us; they just saluted. [Laughter]

I got along pretty well. When the time came for our commissions, for some reason the commissions were held up. They were supposed to have the service for awarding them on Saturday morning, and on Saturday morning they said there had been some delay. We didn't get our commissions until Monday. On Monday we got them, and there were a lot of plans for getting out of there. We all got a ten-day furlough. So getting out of there, the plans had been disrupted. I said to my friend, "Hey, look, tell you what, I'm going to call for this jeep for the last time, and I'm going to have him take me to Birmingham." We were in Montgomery, and that was, I guess, what, ten miles or so away from Maxwell. "You guys, if you want to come, I'll get you a ride." Only one of them was coming at the time. But the guy from the motor pool came up, and he said, "Oh, you're the one, huh?" I said, "What do you mean?" He said, "I heard about you. You got your own car here." [Laughter] He said, "Where you going?" I said, "We're going to Birmingham." He said, "Birmingham? Yeah, I'll take you." So we loaded up and went to Birmingham. That's how I left Maxwell Field.

Hicke: Where did you go after that?

Poole: After my leave, I was assigned back to Alabama, to Tuskegee, Alabama, which was the headquarters of the 332nd Fighter Group. This was the original group of black pilots who had been trained in combat and overtrained and overtrained, and they finally sent them off to Africa when Rommel was threatening. They had gone through Africa and they had gone also to the Italian landing. Then they decided to bring them back because they were going to let others take over that, and they were preparing for the war against Japan. So they brought them back and some of them shifted from single-engine fighter planes to light bombers. I was assigned to that base as an assistant trial judge advocate to this outfit. We did a lot of flying around.

Hicke: Holding courts martial?

Poole: No, no. They would go on these trips, and I would go on the trips with them too.

Hicke: R & R [rest and recreation]?

Poole: Yes, but actually they were supposed to get a certain amount of cross-country flight time.

Hicke: Right, training.

Poole: Every time we thought we were going to move, something would happen. So eventually they put us on alert. We were headed out for the Pacific. That's when they dropped the atomic bombs on Japan. When that happened, and ten days later the Japanese surrendered, there was still some talk that we would be going out to help police the area. But nobody really wanted to go there after it was over.

Eventually, they began releasing people from the service, and the executive officer asked me if I wanted to be released. I thought I wasn't hearing him correctly. [Laughter] So I got released, and I called Charlotte, my wife. She had been working in Washington, D.C., and she left and went home. She had an appendectomy.

Moving to California: 1946

Poole: We had been talking about it--if we ever get out of here, where are we going to go--and we decided on coming to California. She had gotten magazines and books and other things. I had a car, and I drove to St. Paul, Minnesota, and she had just had this operation. Her father, who was himself a surgeon, said that she ought to take at least three weeks to recover from it. That was all right. We didn't have any big furniture items anyhow, because we didn't own anything. What things we did have we shipped out. We had some friends. We had a couple in Oakland.

Hicke: Who was that?

Poole: Joshua Rose, who was a manager of the YMCA in Oakland, and then he became an Oakland City councilman at some point. He's dead now. We came out here, and they had found a place for us to stay, 5300 Manilla Avenue.

Hicke: Manilla?

Poole: Yes, just on the Berkeley line. We looked all around. I was disappointed. This was January and it was cold as hell in San Francisco, and I had always thought it was going to be dancing girls and palm trees on the sandy beaches. [Laughter]

Hicke: You were thinking of Los Angeles.

West Coast Office of Price Administration

Poole: Boy, was it cold. I was so disappointed. After a while, we knew that we had to do something other than that. We had this letter addressed to Ben Duniway, and I called and made an appointment with him.

Hicke: What was his position at the time?

Poole: He was the regional director of the West Coast Office of Price Administration. I went over and met with him, and he didn't say what he was going to do, and I gave him references which he was going to check. Then one day I got a call from the personnel people who asked if I could come over and see Mr. Duniway again. I went to him the next day, and he said that he cleared it up and he was going to take me on as research attorney for the region. They didn't have many personnel, so eventually I became the chief of the West Coast Regional Briefing and Appellate Office. I had charge and supervision over the litigation--not the initial litigation--but over the appellate litigation.

Hicke: What was the litigation about?

Poole: Well, they had these price orders. Everything was under price control. There were people who tried to evade them; there were people who opposed them. We had a war going on with the judges in Oregon who wouldn't enforce the price controls at all. I went up and was specially admitted to the Oregon Supreme Court and I argued a case before the Supreme Court of Oregon and got both of them.

Hicke: This was prosecution of--

Poole: The case had been tried in our district offices. The venue was partly in the district court and some of it was in the state courts. It was quite interesting. As I told you, when it became clear that price control was going off and I had been notified that I had passed the California bar as well, I resigned. But they wanted me to stay on what they called WAE, which is actively employed. In other words, they wanted to be able to refer things to me. I did that for several months, but then I didn't. So as I told you, what made me think about it was when they had an indigent in the federal district court. There were no funds to pay lawyers, so they would appoint them. Judge Louis Goodman was

very active in doing a lot of this, and so I got to know people around the Federal Building, and then I had some cases and I got along with them all right. I had some cases in the state. Eventually, I had one case in which I defended a person. It was a pretty delicate case and we worked it out pretty well, and the district attorney was impressed with the job I did--that was Pat [Edmund G.] Brown [Sr.]--so he offered me a job in the D.A.'s office. It's not where the Hall of Justice is now. It was where the Chinese Museum is, down on Kearney Street.

Hicke: Oh, yes, that cultural center.

Poole: That's where the old Hall of Justice used to be, down that way. So I went to the district attorney's office [as assistant district attorney], and I stayed there for eight years.

Hicke: Okay, that was 1951 through '58?

Poole: No, I went there in 1949.

Hicke: So you worked for the OPA [Office of Price Administration] from '47 to '49?

Poole: No, I worked for the OPA from 1946 to early 1948, because by this time they were really shutting down. I had some cases that I was just supposed to finish out, and I finished them out in early 1948. It was around that time that I met Bob [Peckham], because Bob was an assistant United States attorney. He was always very helpful. He was a nice man. You would ask Bob something and he'd give you an answer. But he was nobody's pushover, you know, and we didn't always agree on things. Also, we met in this Young Democrats thing. In 1948, of course, when Harry Truman ran, the Republicans were very disappointed that he had won. We, as Young Democrats, were very pleased with being that. I used to see Bob off and on. We were friends. We weren't close friends at that time, but I went through the years at the district attorney's office. I was there until 1958. That was the year that Pat was elected governor.

III U.S. DISTRICT ATTORNEY'S OFFICE: 1949-1958

District Attorney's Office

Hicke: Before we get into that, I want to hear more about your work in the D.A.'s office.

Poole: Well, everybody used to start off on what was called the complaint desk. That was where the cases were originally made--authorizing a warrant--and the case would be initially started in the municipal court.

Hicke: Who would file the complaint?

Poole: The police, and some cases were initiated by an investigation by the police with our office, and then we would go to the grand jury. I was on the complaint desk at first. You get what they called the barking dog cases and that sort of thing. But I only stayed there about six or seven weeks. I did a lot of preliminary hearings. I also went out with the police, and that is where I smoked my first and only marijuana cigarette. [Laughter] One of the police said to me-- In those days they would go after a guy-- he might have what they called a roach, some about this long. [demonstrates]

Hicke: About an inch.

Poole: Yes, and he'd be arrested for that. Nobody would do that today. I went with him. Pat assigned me to go and work with the police. He wanted me to see how they did things, and he wanted to hear from me about my opinion on what they were doing and so forth. It was kind of interesting. So I drove around with a lot of them.

Hicke: You accompanied them?

Poole: Yes, they'd make busts and all this. Yes.

Hicke: So there you were when somebody got busted with an inch long--

Poole: Yes, oh, that was a big deal. [Laughter] When my tour was over with the police, Pat-- His number three man was a fellow named Bill Atkins, and he used to review all of the grand jury transcripts and all the stenographic transcripts. When you have a preliminary hearing to decide if a person who has been arrested would be bound over trial in the courts, there would be a preliminary hearing first. Or it could go to the grand jury. You're entitled to a grand jury. You're entitled to a preliminary hearing which gives the defense a chance to air out what the facts are instead of having it go directly to the grand jury where it's in secrecy and ultimately gets an indictment. Bill used to read all these transcripts--that was his job--and he told Pat that I was doing a very good job on these. So Pat decided that he would promote me from the municipal court and the complaint desk to the main office, which was not in the Hall of Justice. It was in the Bank of America Building on Clay and Montgomery Streets. It had the eighth floor. So I went over there, much to unhappiness of some of the people in the complaint office, who thought it was kind of rushing things.

Hicke: Fast promotion?

Poole: Yes. So that's where I was for the next number of years. I tried a lot of different cases.

Hicke: Let me just ask you, what were your first impressions of Pat Brown?

Poole: My first impression--I didn't really have an impression of him until-- I told you about what he told me, did I not, when I came down to see him the second time?

Hicke: No.

Poole: I had this case with a doctor in San Francisco. It was a traffic case, and it never should have gone to trial, but the doctor was stubborn, and he maintained he had been insulted and mistreated--not physically mistreated, but mistreated by the policeman--and had been called names, and called boy. He was a very prominent guy, so he was going to--

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Poole: The judge wanted to fine him. He said well, I think I have to fine him. Matt Brady was the judge then. He had been a former district attorney, and he is long gone. The cop felt that this client of mine was wrong, and they felt that the court shouldn't

give in to him. Nobody wanted to yield anything. That was the problem there. So we were there to either try the case or whatever it was, and I persuaded my client that nothing would happen: "I'll tell you what; there isn't any question that you went through that stop sign on California Street. There is no question about that. Now, you'll get a fine. I think we can take care of everything else. I think I can take this policeman and make him yield on the other stuff. But it doesn't make sense to do it." But he wouldn't agree to anything.

So we finally went into the judge's chambers. The judge called us into the chambers, leaving the client outside, and he started talking about it. I said, "Your Honor, excuse me, but my client is not an easy person to deal with. If he gets the idea that we're in here deciding his fate without his having anything to do with it, I'll lose him." "And," I said, "whatever is suggested, before we accept that, you have to give me an opportunity to talk with him." He said, "All right." So we suggested a number of different things, and I went out and talked with the client. He came down from almost everything, but the police were hanging back about that fact-- See, they had charged him with resisting arrest. He didn't go anywhere, but he was charged with that anyhow.

I talked to him and said, "Look, you've got patients, you've got things to do, and any way you take it, nothing is going to happen. I'll tell you what I'm holding out for. You went through a stop sign, you can't dispute that. That's the only damn thing I'll concede, unless it gets hot and I come out and talk to you first. Is that a deal?" And he said, "That's all right." So I went in and we bargained this thing for a good while, and eventually the judge said he would dismiss everything except failure to stop at the sign. He said, "I'll fine him five dollars." So I went out and told the guy. He said, "I won't pay that man." I said, "I'll pay it for you." [Laughter]

This is Dr. Carleton Goodlett. He's still alive. He was, for a long time, the operator of the newspaper circulated in the black community--the Sun Reporter. Anyhow, finally when he said he wouldn't do that, I came back and I said, "Judge, to get this out of your way, I'm sorry it has taken so much of your time." "But," I said, "how about suspending the five dollars?" I said, "If you don't, I'll pay the damn thing myself." [Laughter] It got suspended. He dismissed all the charges, except they found him guilty of failing to stop, and he suspended the sentence. He fined him five dollars and suspended the payment of the fine

It was after that I got called. As I remember now, one of the political bosses here in San Francisco was Bill Malone. I had

talked to Bill about the U.S. Attorney's Office. I was sort of interested, and I always had this hankering for the federal side. Bill maintained that he had nothing to do with that. He didn't have much to do with it. But this was the only time he had ever been candid in saying he didn't have much to do with it. And I used to talk with Bob a good bit about cases down there. So I was interested in that. Somehow, someone, and I can't remember who it was now, told Tom Lynch, who was the chief assistant D.A., and Pat Brown that they might want to take a look at me as a possibility.

After this thing was over, Tom Lynch asked me to come down with him and Pat. Pat talked to me and I made out an application for him. He said that he had a couple of other people that he had to decide what to do with, and he did have a couple. Then they called me again and I came back to see them. Then Pat said, "Fine, we'll do it. Now, I'll make an announcement when the time comes. We won't say anything about it until I make the announcement." I said, "Fine. I have some things I need to clear up anyway, some work to be finished." So we agreed that it would be around a couple of months from then.

When that time had expired and I came down to see him again, he was very pleased he was going to have me there. Then he said, "Now, just one thing. There might be some cases that I wouldn't want you to handle." And I said, "What kind of cases would they be?" "Well," he said, "you may find a situation where some colored fellow was charged with assaulting a white woman, and it might be kind of difficult to handle." I said, "Why?" And he said, "Well, you know, there is a lot of stealing, and the police wouldn't like it, and someone in the department might not like it and everything." I said, "I didn't get the understanding that you assigned your people to try cases depending upon what somebody in the police department or in the public thought. If a person isn't capable of trying the case, he shouldn't be assigned to do so. In fact, he probably shouldn't be in your office." He said, "This won't happen very often."

I said, "Pat, look, I don't even know how to tell you that I appreciate your making the offer to me, and I thought about it, and I talked to my wife and she was pleased with the idea. But I can't accept that restriction. If that's the way the office is to be run, I think it would be a grave mistake to have me in it. You're the district attorney. You have to make your own decisions on who's going to do what in your office, and I can appreciate that. But thanks, but no thanks. I'm not going to tell anybody about this. I'll just keep that to myself, but you won't be embarrassed. I'm not going to try to embarrass you or the office or anything, but I don't think I want to come to work for you under these conditions." So I got up because I was ready to

leave. Tom Lynch said, "Wait a minute, wait a minute, wait a minute, wait a minute, wait a minute." He said to Pat, "Pat, you can't do this." And Pat said, "I guess I was wrong."

Hicke: That's amazing, that he would agree he had been wrong.

Poole: He said, "I guess I was wrong," and he said, "I'm embarrassed." "But," he said, "I take all that back. No, I'd like to have you, and there's not going to be any of that in this office." Pat has told that story, in fact, in his book. I think he put it in his book a couple of times.¹ But, in any event, that was my understanding with him when I went to work for him.

Hicke: Let's continue on with working for Pat Brown then.

Poole: Let's see, this was in 1949, and Pat wanted to run for attorney general. The election was in 1950, and he did. He had run before, unsuccessfully, but he ran this time for attorney general. That's where I met people like Bill [William] Orrick over there and-- Who were the old-timers over there on the court? There were quite a few of them. I became friends with him, and Bill and I are still friends to this day. I remember that when the election came, we went around the state a good bit.

Hicke: You must have been campaigning hard and fast.

Poole: Well, actually what I did was I met with people, and I give that as kind of an exhibit. It was kind of interesting. I saw a lot of people in various parts of the state that I had never seen before. And he won.

Hicke: Do you recall what he campaigned on or what the issues were?

Poole: He ran against Fred Hauzer, who was the attorney general and had a pretty questionable record in some things--supposedly some big deals that were made. I can't remember the details now. But he won. When he won, Tom Lynch called me. By this time I was pretty well established in the office, and Tom Lynch was going to succeed Pat as D.A., provided that the mayor appointed him. That was Mayor Elmer Robinson. Tom asked me if I was interested in the Attorney General's Office, and I said to him, "Well, you know it

¹See Edmund G. Brown, Sr. Years of Growth, 1939-1966; Law Enforcement, Politics, and the Governor's Office, an oral history conducted 1977-81 by Malca Chall, Amelia R. Fry, Gabrielle Morris, and James Rowland, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1982.

pays more than you do here." But there was a certain small amount of private practice we could do in those days.

Hicke: Separate from the job?

Poole: Yes, and I said, "So with that, I'm fine. I'll stay with you." So Pat became the attorney general and I stayed with Tom, and he reorganized the office. Norman Elkington, who had been in the office before and then had gone back into practice, came on as the chief assistant, and I became what was called the chief of the superior court. That's the trial court. I had the direction of all the trial lawyers and some of them didn't like it. One of them was displaced, as a matter of fact, and a couple of them left. I stayed there and I did every kind of work. I handled the grand jury; I tried cases, a lot of cases. I would suppose that during my time there, I must have tried maybe 115 jury trials.

Hicke: Do any stand out in your mind particularly?

Poole: Oh, some do, but each year it grows fainter.

Hicke: Yes, but maybe you could just think of one that would be an indication of what you were doing.

Poole: Let's see. One that I remember most poignantly was one that I lost. It was a rape case. A Caucasian couple had adopted, when she was a young girl, a person who was part Indian and part Caucasian. She was a very good-looking person, and she was a nice person. They had moved from Arizona to San Francisco. One night she went to a party somewhere up around--if you go up Fell Street going west, there is someplace up there called something Park. I've forgotten the name of it now. There was a lawyer who had an office down at the Embarcadero and I knew him. I had nothing to do with him. I thought he was a fairly shady guy. But he was known for giving great parties.

At his house he had a party, and she had gone to the party with a couple of other girls. They had so many people in the house--it was in the warm weather--that several people went out to get fresh air and that sort of thing. She went out, and she had left some article in the car. So she asked for the keys so she could go out to the car. She went out there and just got into the car when another one drove up, and two or three young fellows saw her there and came over and started talking with her. I'm not sure whether she got what she was looking for or not. She closed the door and was locking it when they said come on, let's take a ride. She said, no, and they grabbed her, and whoever was driving the car drove it up. She struggled with them and they put her in the car. She lost one of her shoes and they drove away. They

went to someplace in Golden Gate Park. There were three of them, I think it was, either three or four, but they took turns raping her, except for one who did not.

They brought her home and let her out. Her adoptive parents, by the way, had been missionaries. They called the doctor, the ambulance, whatever it was. Anyhow, some people at the party identified the youngsters; they knew who they were. I prosecuted them. I took it to the grand jury, the grand jury indicted them, and the case came out. Their defense was that she went along with them willingly. I knew it wasn't true. It was a very close case because you had these three or four of them. Two of them were brothers. They had two priests and two nuns who came and sat in either the front row or the second row, and they had a priest who came and gave them character references. So the whole thing was these people from a devout family and this girl's adopted parents who had been missionaries. She didn't, except sporadically, go to any church.

It got really nasty. It was really nasty. The jury was out a long time, and they came back and they acquitted these three fellows. There was one of them that we couldn't prove that he had done any more than be present. I remember a couple of the women on the jury said, "Well, she was wearing the wrong kind of--" Let's see, how was it? I think what she was wearing was kind of oval on the shoulders, and she was wearing--I don't know, some part of her underwear had straps on it. And they said she was wearing the wrong kind of--

Hicke: She was wearing a party dress, obviously.

Poole: Yes, she was wearing a party dress, and she shouldn't have had that kind of--whether it was a brassiere, or whether it wasn't. I said, "You're kidding."

Hicke: The victim is at fault.

Poole: Yes. "Do you really mean that?" And they said, "Yes." They said, "We thought you did a splendid job." I said, "You know, I'm going to have to hold back, because I'm about to lose my faith in the jury system. If people like you, who appear to have common sense, can resort to--" I said, "Of course, I know that isn't why you did it at all. But in your mind, this is a provocation you're talking about." I said, "I don't want to see you anymore." And the priest was there and he said, "You, as a public servant, shouldn't express those thoughts." I said, "Father, I know better than to argue with a priest, and, frankly, I'm disgusted. I think the church was prostituted in this case." And he looked at me, and I walked away.

I remember that one. It bothered me for a long time. I talked to Tom about it--Tom Lynch--and I said, "I wonder if somebody else could have done that differently." Nobody really wanted to try that case. Although I was their superior, if there was a case that for a reason the person had a valid objection to trying, I wouldn't make him do it.

Hicke: You would do it yourself?

Poole: I tried a whole lot of different cases and, for the most part, I had good success. I tried one kidnapping case. It was a prominent realtor here--Max somebody. Time has passed and I can't remember all their names. He had two boys; they were twins. They were kidnapped by a couple of guys. At the time they were kidnapped, a couple of the police inspectors got onto it and went there and broke into the place where they were, pulled them out, and arrested the two guys who had been their captors.

At that time, I was trying a manslaughter case. It was a death case of a woman who had married back in the early forties. Theirs was a stormy marriage and they separated.

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Poole: She said that he was often brutal to her and so she left him. She took up with a sailor who was very good to her--very kind--but he got killed, and she was pregnant. Her husband then wanted her to come back to him, but he didn't want the baby. She didn't want to go back to him in the first place, and she wasn't going to give up the baby. They lived in Fresno.

She came to San Francisco, because she was really afraid of him. Her parents were Russian, and there was a Russian ministry somewhere up on Fell Street at Golden Gate Park. It was a large house, and the primate who was in charge was--I didn't get to know him well, but he sounded like a really fine person, because he was interested in these people who didn't have-- It was kind of a shelter for them. There were four or five of them there, and she was there with the baby. The husband found out where she was, and he was in Oakland at a bar, and I think he got himself a little drunk. He found out where she was and he sent her--in those days they would have the singing birthday messages. He arranged for one of those, and there was a card with it too. So the messenger came with the card to the house. He had tried to get into the house and they wouldn't let him in. Her birthday was either that day or was going to be the next day. So he had the singing messenger, and the singing messenger came to the door and told whoever opened the door that they had this singing message for the girl. They called her down and she came down, and the messenger

sang the song and then was on his way, and the guy stepped out of the dark and killed her. It was one of those things that said happy birthday, you know, and surprise.

So we tried this case. His defense counsel was a Leo Sullivan of northern Oakland, who was a very well-known trial lawyer, and Patricia Smith, who is, or was, on the superior court in Oakland. The guy had a kind of poignant story, but I said that I would take a second degree, and they said, no, they might take assault with a deadly weapon or something like that. I said, Leo, not on your life.

Judge Al Wollenberg was the trial judge in that case, and it was kind of a sensational one, so they moved it up to the City Hall. We were in oral argument, the closing argument. The two inspectors were Alfred Nelder, who subsequently became the Chief of Police in San Francisco, and George somebody, I've forgotten his name; he's still around. They had gotten the statement and gone through this thing, and they were under merciless cross-examination. Leo Sullivan was a good lawyer; he was a tough guy. We adjourned that day, and the next day they came back and he continued his argument. He talked about it, he paraded, he mimicked them, and did all that sort of thing. The jurors were laughing. What he didn't know was--he had come from Oakland, so he hadn't seen the San Francisco Chronicle that morning. These two inspectors were on the front page of the Chronicle because they had broken that kidnapping case. [Laughter]

I didn't know the jurors had seen this, and I was kind of worried that--what is all this? They went back and they found him guilty of first degree murder. So I said to Al Wollenberg, I said, "You know, Judge, there is something to be said for this man." I offered them a plea. "Nothing that we can do is going to bring her back." But his family--I remember that in the trial, they had priests. Two priests had come from Fresno, where she had lived down there, and where he had lived, to testify--his character and all that sort of thing. But the jury didn't pay any attention to that. I said to the judge, "They found it real first degree murder and they fixed the sentence at life imprisonment. Do you want me to make the motion to reduce it?" And if I did make the motion, he said, "Well, you might have some problems with that."

He said, "I think if we take this young man in his state of mind and so forth, I think we can find sufficient mitigation to cut it down to second." I said, "That's fine with me." So he said, "Well, when the time comes for a motion--" I went out in the courtroom and here was this man who had just been found guilty of murder sitting with an armed bailiff. His lawyer and everybody

else had gone and left him in the courtroom. I said, "Where is counsel?" He said, "They left." So I sat there and talked with him for a long time, and I said, "Look, you still have some life, and don't give up yet. The judge has still got before him the question of whether there should be some mitigation. We'll see what he says." When he set the date for announcing the sentence, Al Wollenberg reduced it to second degree, and the guy said to me, "If I have any friends after what I've done," he said. "they are Judge Wollenberg and you."

Well, he went off to prison. He served about eight or nine years. He corresponded rather frequently to both Judge Wollenberg and to me. Finally he was released on parole. In the prison he had been writing scenarios and he sold some of them. Then he bought into a trucking business and was out on parole. He would come to San Francisco and he would call me. As late as when I was on the district court, he would call me. He always wanted me to come to dinner with him. But I remember him because, as Al and I had said many times, we thought we did something for this man. I guess you look at these things and it just is not all one-sided. Anyhow, I remember that case very well.

Hicke: I think maybe we ought to stop here for today.

Changes in Personnel and Positions

[Interview 3: April 8, 1993]

Hicke: Let's begin this morning at the point when Pat Brown was elected governor, and so maybe we can pick up that story, because there was some interesting California politicking going on.

Poole: Yes. Well, Pat Brown had run for the office of attorney general of California in 1950, and he was elected. So he left the District Attorney's Office and was succeeded as district attorney by Tom Lynch, who had been the chief assistant. Tom Lynch then made some personnel changes in the staff. He had not been happy with the functioning of it, so he brought in Norman Elkington, who had formerly been an Assistant District Attorney in that office and who was out in private practice. Norman Elkington was a natural as a great trial lawyer. He was very thorough.

Hicke: Why did he decide to leave private practice?

Poole: My thought at the time was, and it still is so, that Norman had some heart problem which, in the daily hurly burly of private

practice, could make you very uncomfortable. I think since he loved the work at the District Attorney's office, he wasn't going to be in court every day. He would be in court fairly intermittently, and he could select the cases that he wanted to try. And, also, he took charge of the grand jury. So that was kind of a nonadversarial sort of thing he had, and Norman did that and a number of administrative things. He frequently represented the office in various situations in the city government that took place.

Tom also then appointed a couple of us to the next highest positions in the office. I was appointed as the chief of the superior court. The name really doesn't tell you what the job was, but my function was to assign people to the trial or cases to watch over their assignments, to consult with them on cases, sometimes--very frequently, I guess--it would be to meet with the judges who might have problems with the way things were going in the office, and then to take my share of the tough cases and to see that they were done. Also, I and another lawyer--who was my contemporary and who did, somewhat, on the other side of the office the things I was doing too--we also had to prepare the office budget and all that sort of thing and get them prepared. Then Norman Elkington would take it out to the Board of Supervisors and take all the credit for it. [Laughter]

Hicke: That's the way of the world.

Poole: Yes, that's the way it is.

Hicke: Who would be the other contemporaries?

Poole: There was Francis Mayer. Francis Mayer is still around. He is a senior Superior Court judge now. He was a good trial lawyer, and he was a hard working fellow. He and I just got along splendidly. We sort of meshed with each other. Lots of times we got a great deal of fun out of the office. It was not a bad time.

IV CLEMENCY SECRETARY AND LEGAL COUNSEL TO GOVERNOR PAT BROWN,
1958-1961

Pat Brown Runs for Governor, 1958

Poole: Tom didn't make those position changes until I think it was 1952. I stayed in the office, and so did Fran, until 1958. In 1958, Brown ran for governor. Having completed two terms as attorney general of California, he then ran for the position of governor. Senator William Knowland, who had been in Washington and thereby sort of away from California, wanted to come back. Of course, he had both sentimental and family interests in the newspaper which his family had founded.

Hicke: The Oakland Tribune.

Poole: The Oakland Tribune. He wanted to be back home. He felt that with [Dwight D.] Eisenhower firmly in the presidency, if he had any such ambition, he would have to wait anyhow. He didn't want to roll that time out as United States senator, because they were having a whole lot of things that were going on. You may recall the McCarthy era. In the meantime, if Knowland were here, he could have more immediate contact with the newspaper which was his great support.

The governor of California in 1958 was Goodwin Knight, and Goodwin Knight had been the lieutenant governor of this state under Governor Earl Warren. In 1953, President Eisenhower appointed Governor Warren to be the chief justice of the United States. That left a vacancy in the governor's office, which was filled by the lieutenant governor. Therefore, Governor Knight was in the office until 1954. He only had a little bit less than two years.

Hicke: Just to finish that term?

Poole: Yes. Then Knight ran in '54 for governor, and he was elected. But when his four-year term was up in 1958, he then ran into Senator Knowland's desire to become the governor, and in the political gnashing of teeth and crushing of bones, he agreed to step down from the governorship and let Knowland have the Republican nomination, and he would then run for United States Senator. I think it was Knowland's vacancy that he was going to run for.

Hicke: They kind of switched places then.

Poole: Yes. The only thing was that Governor Knight didn't switch places because that place was taken by Claire Engel from northern California, so Governor Knight was out, and Brown beat Knowland, so Knowland was out. [Laughter] It was a very exciting and deadly series of campaigns.

Appointment as Clemency and Extradition Secretary and Legal Counsel to the Governor

Poole: When Brown was elected in November, he selected most of the people he wanted--at least some of the people he wanted--for his team. Actually, I was not his first choice. He wanted to appoint a mutual friend of the governor's and mine too, whose name was Loren Miller.

Loren Miller was a contemporary and part of a very active, aggressive, and effective group of Negro lawyers, of which Thurgood Marshall was one, as well as Bill Hastie, who became governor of the Virgin Islands, and subsequently was appointed to the United States District Court in the Virgin Islands after being governor. Then he was appointed to the Third Circuit.

These people in the middle thirties and early forties, as a group, did more to force aside the barriers of segregation, discrimination, and that sort of thing, than I think any comparable group has ever done, black or white, in this country.

Hicke: Was it an organized structure?

Poole: No, Loren Miller was in Los Angeles, Hastie had been the dean of Howard Law School in Washington, D.C.; there was Bernard Jefferson, who was-- You remember the New Deal was on now, and there were appointments being made of very high-grade, professional black lawyers in a position where they had never been before. These were high old times. I'll never forget them,

because when I came out of law school years later, that work was still going on. The task wasn't over, and there was nothing more that I wanted to do than to be a part of that New Deal Washington scene.

I was appointed, eventually, to the National Labor Relations Board, which was sort of the underside of that, because you didn't have many revolutionaries in there. They had some Communists in there--so said the United States Congress.

Loren Miller, along with people like Marshall, with some of the law professors at the University of California, Boalt Hall, were gradually taking on and for the most part being successful in, if not knocking out, at least reducing the impact of the black-white society and the restrictions that even pervaded railway transportation. They had Jim Crow cars on there.

Hicke: That's interesting. What exactly were they doing?

Poole: They were deciding cases. They were filing lawsuits, including the Brown v. Board of Education desegregation case before the Supreme Court. That was one of their cases. They were all involved in Brown v. Board of Education; they were all in that.

Hicke: And were they in communication with each other?

Poole: Oh, yes.

Hicke: So they did form a sort of a--

Poole: Periodically, there would be--perhaps on an occasion when there was a convention, for example when the NAACP would have its convention in Los Angeles--you would see a gathering of most of these people. They would come down there. Loren Miller was one of those [telephone interruption].

Hicke: We were talking about Loren Miller.

Poole: Loren Miller. For a good while there had been efforts made to challenge the racial restrictive covenants of California. When they built the railroads back in the 1870s, they brought in lots of Asian workmen, and a lot of them came to California to live. California pioneered the development of the racial restrictive covenants, which were that in these areas covered by covenant, no person who was either of the Chinese-Asian descent, Indian, East Indian descent, African descent, and whatever else there were, could occupy these premises except as a servant.

They fought these things, and in the early days they were unsuccessful because the California judiciary sort of looked at it as if to say, well, this is our castle and we've always lived in the castle, and we're going to continue living there. But some professionals at Boalt--I can't offhand remember their names, they had been there for a good while--wrote articles. One of the themes that they stressed was that when the state of California and a court in California upheld one of these covenants, that was action by the state, and this action by the state discriminated against people on account of their blood, their race, and all that, and this was a violation of the Fourteenth Amendment. That didn't go until the complexion of the Supreme Court of California changed. On the seventeenth of May, when the Supreme Court of the United States decided Brown v. Board of Education and its related cases, Marshall argued those cases and they won. That was the greatest victory. It was so very thrilling!

Loren had been one of those lawyers, and he also had challenged a lot of the strictures in the bar and in the courts. As such, he became a target for newspaper and other attacks. The Los Angeles Examiner was one of those. There was a story that went around that contended that Loren Miller, in the thirties, had been a member of the Communist Party. I haven't any idea whether he ever was, and, while we were very good friends, that question never came up. We talked about what they were doing, but it never occurred to me to ask him. I used to go to his house and he'd been to mine, but whether he was or wasn't, he was, in my book, a premier lawyer.

So when Pat became governor, he wanted to find something--he was friends with Loren--he wanted to find something for Loren Miller. He was going to appoint him to the position of Clemency and Extradition Secretary and Legal Counsel to the Governor. And this is no secret: he was told by the publisher of a newspaper in Los Angeles that if he did so, they would run these series of articles on Loren, and they would blast him, and Pat told me that. Loren had fought many battles, but wasn't prepared to fight the battle of his own integrity. I talked to him on the phone a good bit, and I said, "To hell with them, let's do it." He said, "Look," he said, "Pat can't stand that." He said, "This is where he gets diverted, and he hasn't even taken office yet. They'll never let him out of that, and I don't want to stand it. I'll fight the bastards wherever I have to, but if they're going to challenge me, let them come up and do something about it."

He wouldn't do it, and Pat called me and told me this. "So," he said, "I guess I won't be able to appoint him, but I would like to have you take it." I said, "Loren is the guy you should have. I think you ought to make a fight of it." He thought so too, and

he said, "Well, why don't you talk to him again?" And I did, but Loren was deaf; he said, "Look, I've had too much." So Pat appointed me.

Hicke: He didn't want to take it for the governor's sake?

Poole: Yes.

Hicke: He didn't want to take them on in a fight?

Poole: Yes. He had some very fine people in the office: Fred Dutton, who is now a lawyer in Washington, D.C. and at one time was in the White House with Kennedy, and there was Hale Champion, who had been a feature writer for the Chronicle, and he came to the office as the press secretary. In later years, he became the governor's financial aide. He was an independent officer. When he left there, I think he was appointed the treasurer of the University of Minnesota, and then he became deputy undersecretary of HEW [U.S. Department of Health and Welfare]. Then he became the treasurer of the Harvard School of Business. He retired from there a few years ago. I see him every now and then. It was in New England, and we spent some time with him and his wife, Marie.

Kidnapping of Hale Champion

Poole: Incidentally, when I became the United States attorney and in about 1966, while Hale was still in the state office, he was kidnapped; he and his wife and young baby were kidnapped by two people who had broken out of jail up in Oregon. They had stolen a car, come across a woman who was by herself in the car, made her get in their car, and drove farther on and found a camper with a family in it, got in there and held them, and made them drive them down into California. There they turned them loose, but the two men who did that were running across Sacramento trying to find some way of getting out and they came across a light in a house, and they found that the door wasn't locked. That was Hale Champion's house. His young son and a friend had been playing, and they had not locked the door.

They made Hale and his wife Marie--and they had a young baby then--made Hale and his wife Marie get up and put on some clothes and made them drive the two of them. They drove into Nevada and were ordering something to drink at one of casinos that was open, when somebody at the bar, who had some suspicion as to who they were but who was himself drunk, fired a shot which missed them but hit Hale in the thigh [laughter]. So they drove a little while

longer then made him get out of the car. They just literally threw him out of the car, and they never harmed her. They drove up in the mountains toward Yosemite from the Nevada side. There was a full pursuit going on from somewhere. They forced her out of the car, and they gave her--they had robbed a couple places. So they gave her, I think it was \$600, and said, "Don't tell your old man we gave it to you." Then they went into Yosemite where they were captured.

Hicke: An interesting story

Poole: I'll tell you something else. They were indicted by the United States attorney, and that was me. And I went to see them, and I said, "I'm going to enjoy this." [Laughter] And they said, "Well, can you work out some kind of a plea?" I said, "Sure, you don't know how I'm going to enjoy this, you bums." They finally pleaded guilty.

Hicke: They picked on the wrong guy, didn't they?

Poole: Anyhow, that's a kind of diversion, but every once in a while when I'd see Hale, we'd talk about that.

Hicke: So you had Fred Dutton and Hale Champion in the office.

Poole: Yes, and there were a number of members of the legislature who were very friendly and supportive of the governor, and there were some who weren't. I was with Pat two and a half years.

Early Responsibilities

Hicke: What were your responsibilities?

Poole: What Pat had me do was, first of all, in those days, California used to process about 1,400 extradition cases a year. Also, they had the death penalty cases, and it was my responsibility to review every death penalty case that came up and to give to the governor a recommendation as to what he should do. In order to be able to make the recommendation, I had to read volumes and volumes of records and transcripts to see what it was, and I had to give him my opinion, whether the guy had gotten a decent shake or not, the nature of the case. I would summarize for him what the fellow's prison record had been, to what extent he seemed to be incorrigible or not. I would go over the reports of the warden, the reports of the prison chaplain, the reports of the prosecuting

district attorney, the report made by the trial judge, and I would read the transcripts.

Hicke: What were the decisions of clemency based on, all of these factors?

Poole: Yes.

Hicke: And how the prisoner had reacted?

Poole: Pat was opposed to the death penalty, and he had a problem. He was the governor of California, and California had this as its official policy.

Caryl Chessman and the Death Penalty

Poole: With respect to much of the legislation that was either pending in the legislature or had come over to the governor, he often had to take a position on it, and we'd have to go over these things and explain to him what the ramifications were. I'd set up hearings in the death cases, if the other party wanted. Pat was almost never averse to granting a hearing if they wanted one. At these hearings, I would have two or three things I'd want to ask counsel about, and one of those cases was the Caryl Chessman case.

That one was our problem from the day he was sworn in. Pat was sworn in around about the fifth or sixth of January, and Chessman was supposed to be executed about the seventeenth or eighteenth of that month. It was pretty tough, and because we were just getting organized, all I had really to guide me at that time was the records that were still available in that office from Earl Warren's time. I would read the memos that Earl Warren's clemency secretary wrote and the governor's memos--what Earl Warren said in those cases.

Hicke: Wasn't there a clemency secretary under Knight?

Poole: Yes. I was much more interested in Earl Warren. He was now the chief justice of the United States.

Hicke: Yes, I see. All right.

Poole: Yes, there was one [a clemency secretary]. I've forgotten his name now. He was from southern California, and, yes, there was one. He would come up to Sacramento. I'd see him every now and

then. He told me a lot about how he handled things. We used to get together periodically.

Hicke: Well, the Chessman case had obviously been going on a long time.

Poole: The Chessman case had been going on since 1949. This was 1959. Yes, Pat was elected in '58, this is '59, and it went on until he was executed in 1960. Chessman was something like this fellow who's holed up down there in Texas [David Koresh and the Branch Davidians: Waco, Texas, 1993]. He had a grand ego and a lot of nerve. The problem with Chessman was this. The Constitution of California provided in, I think it's in Article VII--I believe it is; I haven't looked at for many years--but the Constitution of California then provided that that governor shall have the power of pardon, commutation of sentence, and so forth. Then it went on to state: except that he may not grant a pardon or commutation of sentence in any case in which the defendant has been twice convicted of felony. And that was as clear as daylight. So, Pat's problem was what could he do in the face of that language?

Now, the Supreme Court of California had no problem with it. The Supreme Court of California said it meant what it meant. Caryl Chessman's offense--he didn't kill anybody.

Hicke: Yes, that was the big problem.

Poole: He had been the person who was referred to as the Red Light Bandit. In the hills outside of Los Angeles, there was a favorite trysting place for people, and this guy had purchased a red light from somewhere, and he'd go up there and occasionally would rob them. On occasion, he assaulted the woman who would be in the car with driver. In one case, he made her get out of the car and get into his car, but he didn't move the car. In another case, he took her about a mile away. In each of those cases, there was some kind of an assault--sexual assault.

What he was convicted of was kidnapping, and the kidnapping statute, which was Section 209 of the California Criminal Code--I don't know whether it's still on the books or not.

Hicke: Well now, how can you remember all that?

Poole: I lived with that for a long time. Section 209 made the offense of kidnapping, if there was what they called any transportation, if they took them any distance-- Now, they had one case in which the defendant had--the death penalty: that was in kidnapping, but it provided for the death penalty in any case in which the victim suffered bodily harm. And the California Supreme Court, in a case in which the fellow's hands or the woman's hands, I've forgotten

which, were bound so tightly that they lost circulation, and in trying to get loose, somehow the rope cut into the vein--

Hicke: Didn't they consider sexual assault bodily harm?

Poole: Yes. I'm telling you any--

Hicke: Oh, I see, even the slightest--

Poole: The slightest. And there was no question about this being bodily harm. That was hardly ever doubted. But the question was, was it a kidnap? Well, sure. He took one of them a mile. The other one he took to his car, which was twenty-two feet away. The problem was that the Supreme Court of California said any distance. That was the transportation of the offense. In addition to that statute, which made so many people very unhappy, there had been some unfairness in that case. Caryl Chessman was an egomaniac, and he felt that he was as smart as anybody who could be his lawyer, so he didn't really want a lawyer. Finally, they had somebody sort of sit near him as an adviser.

Hicke: George T. Davis?

Poole: No, George T. Davis came into the case long after this.

Hicke: It was later. Oh, okay.

Poole: I've forgotten the name of this lawyer down there. It's forgotten in history. He was to be an adviser. That's all Caryl would let him be. Caryl was so egotistical that he infuriated the trial judge, just infuriated him. The trial judge had to do all he could to kind of hold himself in check, and Caryl knew that, and he was going to try to get this guy to blow. His name is Judge Fricke. I think people used to call him "Hanging John." But I must say--I've read that record, I read the transcript--and I've got to say that as tough a man as I knew Judge Fricke to be, it would have taken the patience of Job to have even come close to restraining himself. He ruled against him on almost everything, but when he ruled, you could see there was some basis for it. But the trial was fundamentally unfair in some respects.

In the first place, the judge would not allow daily transcripts of testimony. Now, I had tried a lot of cases, I must tell you. I think by the time I left the District Attorney's Office and went up with Brown, I had probably tried 140-150 jury trials. So, in San Francisco here, when you had a serious case, there would be a transcript ordered by the court at no expense to the defendant. Fricke wouldn't do that in Los Angeles. I think it was his practice not to do it, except in, I don't know, some

most unusual situations. So Chessman had to rely on whatever notes he had, which is what you'd have to do if you didn't have a transcript.

From my own experience in trying lots of cases, when I was trying an important case, I would arrange with the police--they would go to the transcribers, and the transcriber would usually have a transcript ready for you by about ten o'clock at night. They would go to the transcriber, get my copy of the transcript, and they would bring it to me at my house. I would sit up from that time until perhaps 1:00, 2:00, or later a.m. reading this thing and making my notes so that the next morning when I went into court I had full command of what had gone yesterday; when I would ask the witness on the witness stand, Did you not, yesterday, say so and so and so and so, and he would say, "I don't think I said that"--boom--I'd put it right down his throat: Okay, the transcripts are here. However, the prosecutor in that case was Miller Leavy, the deputy district attorney, one of their top people. He could, and on a number of occasions did, go to the reporter and say, "Look, you know on that passage where this witness was saying so and so, I didn't get that down. Will you read that to me?" And the reporter would say, "Okay," and he'd read it. "Do you want me to type that up for you?" "Yes, type it up for me." So, in effect, he got the transcripts. He got that.

Chessman was convicted. After he was convicted, the shorthand reporter died. California had a statute that provided that in a civil case, if the reporter became unavailable or died, you'd get a new trial.

Hicke: Why is that?

Poole: If you couldn't reconstruct the record, what would happen would be that the shorthand reporter would have probably transcribed some of it.

Hicke: Oh, I see.

Poole: There were a number of alcoholics among their ranks, and they didn't always get around to getting it done that way. But there was no comparable criminal statute in criminal cases. But it wasn't known at first that the prosecutor was getting some advantage from these things. Then the problem also was that the shorthand reporter--I don't know why he died, and I don't want to malign him--but he had been having some difficulty. There was some talk; some people said that he drank a lot. I never ran that down.

They finally got another shorthand reporter who agreed that he would tackle this fellow's notes. Other reporters said, "It's impossible to transcribe, just impossible." This fellow said he would do it, and so they got together a record. That became the record on appeal. Then it became known that the reporter who transcribed the notes was an in-law of the prosecutor. [Laughter] So the reason that the Chessman case was a matter of such consequence was, first of all, it was a death case where there had been no death. Second, there was a question of Judge Fricke's partiality. Third, there was the failure to have a transcript. And fourth, there was the fact that although there was no transcript, the prosecutor had had the advantage of having some of it. Then there was Caryl Chessman's stout assertion that he was not the Red Light Bandit, but he knew who it was.

Hicke: Did he say?

Poole: No. No, he played this game quite a bit. Then there was the whole question-- A lot of people, many of whom were opposed to the death penalty, because California was executing them left and right. There were sixteen of them when I was in the office. Here you are, you have a death penalty case with this statute. Then I remember that the Episcopal Archbishop of California, Bishop Pike, who was a fine, fine man--I was a friend of his, I admired him very much--and Pike talked to some lawyer, whose name you have already mentioned.

Hicke: George Davis.

Poole: You mentioned his name--who told him that the statute under which Chessman was going to be executed was one which had undergone amendments since the time that the Supreme Court had previously passed on it, and that, therefore, today--by today we're talking about 1960, '61--that today he could not get the death penalty. Archbishop Pike went all over this state repeating this. Now, I knew him well, and, as I say, he and his wife had been in our home, we'd been in his home. So I called him one day, and I said, "Jim, you've been putting this thing out here, and I'm going to come down and talk to you." He said, "Okay, sure." I went down to his office in Grace Cathedral--you know he was the bishop of that. I had taken the statute and I had made a mock-up of the language, and by different coloration, I had shown what happened to each successive amendment to it, and I showed him that the part that provided for the death penalty had never ever once been changed. He said to me, "You know, I'm sorry." He had stirred a lot of people up. He said, "I'm sorry about that." He said, "I'll never want to trust a lawyer again." I said, "Well, you're trusting one right now; you're talking to him." He said, "No, but this convinced me."

In any event, that went on, but for one reason or the other, each time Chessman was sentenced to death and the time for execution became imminent, some judge somewhere stepped in and did something. People were divided. What they were really divided upon was whether this was a situation where the state ought to be executing this man. That's what they were divided on.

Hicke: And how did Pat [Brown] feel about this?

Poole: Pat would have commuted him if he could. He felt that the first time--As I say, when we had been there for I think eleven days or something like that, there was an execution set and Pat was agonizing. I was frantically getting the Chairman of the Adult Authority and the people in the Attorney General's Office to get those damn transcripts up here, and they didn't come in time. All we could do then--we had a lot of lore on it; there was a lot of material on it, but we didn't have the actual transcripts. His execution was supposed to come off, and I think it was Justice [William O.] Douglas gave him a stay, so we could breathe easily, more easily. And he came up several other times.

Then Chessman would send messages from the prison. He always found some news person too happy to take these messages. In those messages, Chessman said he wasn't asking the governor for clemency. He said, "I'm not guilty. I don't want clemency. I'm not guilty at all," and this other stuff. Hale Champion and I wrote a piece for Pat to publish, indicating that Chessman had not asked me for clemency. And Pat said something like "This is still a matter for the courts, and I shall not interfere." It was getting closer now to the time for his execution. He had gotten to this point several times in the preceding eight or nine years, and he got there again in our case.

Then Pat called me and said, "I think I ought to have a hearing on this case, don't you?" I said, "Absolutely, but it's not going to come out the way you think, because he's not going to be here, and I think it's just going to be another situation where one side will say this and the other one will say that, but let's do it. Maybe something will come of it that we don't know about. Let's find out." So they had the hearing. Miller Leavy, the prosecutor, came up. All his lawyers came up, and we heard it. In anticipation of that, I had begun reading the record. I read the record, and I gave Pat a report--I've forgotten how thick it was now, but it took me a long time to do it--and I pointed out what I thought were matters that he ought to have in mind. I said something in there to the effect that despite the outcry that we have been witnessing, no one has come near repealing the death penalty. I said to Pat, I said in there, "And you asked the legislature to do so and it refused. In the long run, only you

and your conscience can say what you're going to do. Under the Constitution of this state, you are without authority to do it." He read it and he was shaking his head.

At that time, he told Hale Champion and me that he was not going to interfere. He said, "You know, it really goes against my grain not to do it." I said, "Well, that's what governors are elected for, to have a big, thick grain so that they can resist the pushing against it." Well, this was the night before the opening of the Winter Olympics at Squaw Valley, and Pat was supposed to go up there and throw out the first ski, or whatever they do [laughter] at the Winter Olympics. It was a very emotional and exciting time.

All during this time, from the time we'd gotten into office up until this--the time I'm talking about was, I think it was January 1960.

Hicke: I think that's right.

Poole: People had been coming up--this is cold weather--people had been coming up and parading around the Capitol building--Sacramento is a very cold place in January--in bare feet.

Hicke: Protesting the execution?

Poole: Protesting the execution. Then there would be some counter demonstration. But the people who were protesting were much stronger and more in evidence than the others were.

Hicke: Why were they barefoot?

Poole: They were wearing monks' garments, but they weren't monks. I don't know what they were, but that's what they were doing. Somehow there was some religious significance to them about it. All kinds of things were coming in. I don't think I can find it now, but we were having so much--we were inundated with letters and telegrams and petitions and such. In my office, we estimated that we had two and a half million communications. They would come from all over the world.

Oh, Pat had--I had forgotten about this.

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Poole: This is the time we're talking about now. I'll get the date for you. It's either the nineteenth of January or February. [February] It was kind of awesome. The governor's mansion was deserted. Pat was there along with the two or three guards who

were there. Bernice Brown and Kathleen and the children had gone up to Squaw Valley. Richard Nixon was out to the Olympics, and Pat was by himself. Fred Dutton, who was the chief of staff there, was up at the Olympics. Dick Tuck and Hale Champion and I didn't want to leave the governor alone, so we said we'll have dinner with you tonight. So we scheduled dinner at the Mansion Inn, which is right across the street from the mansion in Sacramento.

On that day Chessman did another one of his surprises. He announced that he was sending a letter to Brown that was going to, in a sense, tell it all, and it would show that he was in possession--he would not say where it was--but he was in possession of proof, the revelation of which would make manifest his innocence.

Hicke: He was a long time coming out with it.

Poole: [Laughter] It was a long time. Well, at this time, he was represented by a woman by the name of Rosalie Asher. She was a nice person and she really believed in Caryl. Rosalie called and said that she had this letter for the governor, but Chessman had decreed that it could be delivered to no one but the governor. Now we long since initiated a whole lot of security things in the office. For one thing, the telephone company had to put in additional lines for us. That's how much they were being used. And we had had to put in an indiction against anybody in the office engaging in any conversation with callers on the phone about this thing. We said, "If someone calls about this case, you refer them either to Champion, to Fred Dutton, or to me." So, I guess some of them observed it, some didn't. All I knew was we had to put in more lines. We had these letters and telegrams. They were stacked up like this [demonstrates] in the office. You can't believe it.

Hicke: Well, he wrote a couple of books I think too, didn't he?

Poole: Yes, he had written these books. We went and we had dinner. And I said to Rosalie, "If you give it to me, of course, you know the governor will see it, but Chessman is not going to determine how we route the communication. You can understand that." So she agreed then to bring it up to me. Everybody in the world was notified that she was going to bring this up here. [Laughter]

So we had dinner with the governor at the Mansion Inn and we got through, and it was getting on to nine o'clock, and Hale and I said we had to get back to the Capitol because we were going to meet Rosalie. Pat went into the mansion. Well, Rosalie finally came, and there must have been 150 newsmen up there. She came

into my office, the guard brought her in, and there were just the two of us. She had this letter, and she said, "Before I give it to you, I have to tell you that Caryl made me promise that I would do everything I could to see that this was handed directly to the governor." I said, "You've done that." So she gave me the letter and I opened it and I read it. The best I can say is that--let me say it was less than a Rand McNally map to hidden treasure.

Hicke: Was it no news?

Poole: He talked in generalities, and said some of the things he'd already said before. So while I was talking, Hale Champion, the press secretary, came over several times, because the press were about to blow the walls out, and I said, "I'll let you know when we get through talking." It would be arranged that she could go in and talk to the press.

They had this old-fashioned interoffice communication then. They had a slot and a light for all of the offices. They would light it with green and red lights. The red lights, as I remember, meant that it had some urgency, or as much urgency as you could tell by a light. There was one light on that was the white light. That's the governor. When that light came on, you answered the phone. The light came on--

Hicke: The white light.

Poole: The white light. She couldn't see it, even if she knew what it was. I could see what it was, and so I picked it up, and I said, "Yes?" Pat said, "I've been talking to a number of people. I talked to my son Jerry, I talked to the Catholic bishop of California, I've talked to Bishop Pike, and I've been thinking about it." And he said, "You know, I can't let that man die. I've decided what I'm going to do is, I am going to grant him a sixty-ninety day stay of execution, and I'm going to call the legislature into special session, and I'm going to ask them to repeal that statute." I said, "Well, you know I have a recollection that that has already been done, but that it doesn't look as if it would be any different kind of result." He said, "Well, that's what I think I'm going to do." I said, "I'm a little bit tied up now, but [laughter] think about it until I can get to you and we'll talk about it." He said, "You'd better come in a hurry." I said, "I will do that." I went back to talking with Rosalie and I looked at my watch. I said, "Rosalie, by the way, while I've been sitting up here gabbing on the phone, those people out in the press are getting frantic." Champion had come to see me twice about getting out there. I said, "They want to see you." So when Champion came, I said, "Step out in the hall a minute, Hale, will you? I'll be right back, Rosalie." He came

out, and I said, "You know what that damn fool just said to me?"
[Laughter]

Did you ever see the tape--the video tape?

Hicke: Video tape? No, I have not seen that.

Poole: It was done by Connie Chung. They did this and they sent me a copy of it. Anyhow, I said, "That damn fool just told me this." I remember Hale's eyes sort of rolling up in his head [laughter]. So I said, "I'm about finished with her. Why don't you take her out now?" He said, "Okay, I'm going to take her out." He was going to hand her over to the assistant press secretary. So I said, "Okay, but we don't have any time."

I went back in and I said, "Rosalie, thank you. I'm going to see Pat pretty soon, and I'll certainly take your letter over there to him. If there is anything else, you leave it with them, tell them where you would be. I don't know that there will be, but if there is, I'll know where to catch you." She said, "I'll be at a hotel here in town. So we walked out of my office and into this room that was like the Tower of Babel. And these guys were coming down like waves on her and she got quickly engulfed. Hale and I sort of backed off and got to the door and closed the door quietly and ran outside and jumped in the car and drove to the mansion.

Pat was in a state. I mean he was really upset. There was nobody there but a couple of guards. He said, "I've just given too much thought to this thing. I can't let this happen." I said, "Pat, you've gone through all of this before. It isn't that you're going to succeed. You know you're not going to succeed, and what this is going to do is it's going to add a whole lot of tarnish to your image, and it's not going to spare this man, not for long. The legislature is not going to repeal capital punishment and you know it." Well, he said, "I would rather lose my office than let this man die. I just can't do it."

And while we were still in there arguing, the telephone rang, and it was a reporter from one of the Los Angeles papers. As I told you, we had the idea the phone communications would be answered either by Fred Dutton, by Hale Champion, or by me. So I said to the guard, "I'll take that phone," and Brown said, "No, you're too tough." He ran across the floor--it's a big room in the mansion--he ran across the floor of that room and he took the phone in his hand, and we sort of trailed in behind him. He talked to this then unknown person. I said to the guard, "Who the hell is it?" He said the name of the paper. I just don't remember which one it was. Pat said to this fellow, "I have

decided I'm going to give Caryl Chessman a reprieve; and I'm going to call the legislature into session, and I'm going to ask them repeal capital punishment."

Well, Champion and I looked at each other, and I sat down. And Pat had some more to say. Then I must say as he walked back across the room, it was like he had just won the battle.

Hicke: Jauntily stepping out?

Poole: Yes. We sat down and he said, "What do you think?" I said, "Well, you're the governor of California. You've made up your mind. What we have to do, Hale and I, is go back write this up for you, and we'll do it." Oh, one thing that I forgot. At this time, the president of the United States, Dwight Eisenhower, was about to leave on a visit to Central America. There had been days of agitation down there against Caryl Chessman's execution. My secretaries were working late that night and one of them had handed me a wire, a transcription of a wire. The wire was from an assistant secretary of state, Roy Rubottom. That's the only time I ever heard of the name. It said that the demonstrations, I think it was in Uruguay if I'm not mistaken, had been increasingly violent. We had read about them. They had several days of rioting and increasing violence. Eisenhower hadn't gotten there. He was going to get there the next day or the day after that. They said there was fear for the president's safety. So we got this, and I said to Pat-- [Laughter]

Hicke: [Describing Poole's gestures] With your head down, you just stuck your hand out and handed it over.

Poole: So that's what we did. We made this one of the focal points of our theme.

Hicke: Did they ask you to do something about this?

Poole: The State Department didn't say do it. It's a telegram to us. We understood what that was.

Hicke: To commute the sentence, okay.

Poole: So we went back to the mansion and we wrote this up, featuring prominently Eisenhower and his trip, and Pat was pleased with it when he got it. Then I called the prison. I called the prison before I went back to the Capitol and I got the warden. I said, "Warden, this is Cecil Poole." He said, "Yeah, Mr. Poole, they told me you were calling." I said, "How's Caryl?" He said, "Oh, he's all right. He's pretty calm." I said, "Well, get him out of there." He said, "What?" I said, "Get him out, the governor is

going to give him a reprieve." He said, "Why?" [Laughter] I said, "For all the reasons you heard before, he's going to do it." He said, "Okay." I said, "We'll get you a copy of it just as fast as we can." So, we went back over to the mansion and we wrote Pat's statement. There was just pandemonium. The phone began to ring, and they just stopped ringing it. The press came.

Hicke: What was Rosalie doing at her press conference meanwhile?

Poole: She said something about it. It was printed. So he had a reprieve. Once you're given a reprieve, you see, they have to start it all over again.

Hicke: A reprieve is the same as a stay of execution?

Poole: It was a stay of execution. They called the legislature into session, special session, and several of us had long talks with Pat's friends in the legislature. What the Democratic majority agreed to do was they decided that it would be introduced in the Senate first. So they called a special session and they appointed this committee. This committee had thirteen people on it. There was a lot of excitement and condemnation and praise, and all that. The legislature had a long hearing that went on way into the night, and proponents and opponents of capital punishment, and proponents and opponents of Caryl Chessman's execution came and had their say, so that it lasted well into the morning hours. I mean until after midnight. Then they voted seven to six to deny it, and the people said, "Gee, that's close." Hale and I said to each other, they could have made it any number they wanted.

That committee of the legislature understood what the governor was going through on that. They tried to let him down as easy as they could. Then the blasts began.

Hicke: You're saying that they made it as close as they could?

Poole: No, they let him down as well as they could.

Hicke: That's what I mean--by making it a close vote, yes.

Poole: I knew from the beginning how it was coming out. You could see it. Nobody came up and said, This is how the vote is going to be. That meeting was in March of 1960. Then after that, of course, they had to go back to the Superior Court. It's the Superior Court that has to fix the time. The Superior Court fixed the time and sent the warrant to the warden who had the custody of him. Then there was some effort at habeas corpus in various areas, and people called Brown a lot of names. They said he was a tower of

jelly, and it was what we thought was going to happen. It was probably the low time of his popularity in this state.

Then it began again--the marches, the slogans, and all that sort of thing. Pat went down to something in Los Angeles and he was booed. All kinds of efforts were made. As a matter of fact, Pat addressed that part of the Constitution that said that in the case of a person who shall have twice been convicted of felony, the governor shall be without power to grant pardon, commutation of sentence, but he has the power to reprieve. The rest of that section provided "except upon the written consent of a majority of the justices of the Supreme Court of California." Now, we knew what the vote was. We were quietly trying to work the Supreme Court. Pat had appointed one justice, Justice [Thomas P.] White, and Pat hoped that Justice White would support. The vote was apparently four to three. It was split.

Hicke: Against Pat?

Poole: Against him, yes. We went down there and Pat drove to a business committee meeting. I went with him, and the driver took me up to the California Supreme Court, and I talked with the chief justice [Phil Gibson]. The chief justice had previously said that the vote--this was before; we had talked of this earlier--he said that the Supreme Court is not going to make that request, "And I think if the governor insists upon it, they will write an opinion. He won't like it." I told that to Pat. Pat called him, knew him. I talked to the new justice; he wasn't new then, he'd been on there for a year and a half or so. But Justice White told me that he believed that this was a just sentence, "and furthermore," he said, "if I change my vote, it would have to be to repay the favor the governor did for me, appoint me, and I don't think he would want that to be the situation." I had no such scruples as that. [Laughter] But he said no. Pat talked to the chief justice, Phil Gibson, and that's the way it went down.

So we came up to the execution day. I had forgotten about a lot of this, except when I sit down like this and I think about. People would call my house. My wife would answer the phone, and they would just sob on the phone. They would be incoherent. People came from all over the world.

Hicke: Why do you think there was this huge public outcry?

Poole: Well, it became one of those issues that you could make the kind of issue you wanted. You could make it that this was a very evil man, if you wanted to. You could make it also that human life is precious, and he didn't kill anybody. If you have any

justification for capital punishment, he didn't kill anybody. This went on.

Hicke: So it stood for good and evil; it was kind of an allegory for good and evil?

Poole: Yes, yes, it was that way. So we came up to the night before the execution. He was executed, I think it was the second of May.

Hicke: Yes, that's the date I have.

Poole: Everything had failed. Pat finally had to tell the world that he was not going to try to stop the execution. The legislature had spoken. The courts--

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Hicke: You just said, "the courts, by their silence, have spoken."

Poole: Yes. So the people thronged around San Quentin, and people thronged around the Capitol. Whenever there was an execution, I would always open up a line to the prison in San Quentin from my office in case anything would happen, so that I kept in touch with the warden. On this occasion, I moved over to the governor's office, into the office of one of his two secretaries where through the open door I would talk to the governor. He was at his desk.

They had taken Chessman out of his cell and had put him in a holding cell, which is adjacent to the execution chamber. I talked to the warden about it and asked him how he was. He said, "He's calm. We've got a lot of people out there, but those walls are pretty thick up at San Quentin. You don't hear a lot of them." He said he had done some writing of some letters. He had a little bit to eat about three o'clock this morning. I don't know how you can do it. So we talked, and every now and then Pat would say from his desk, "Anything doing?" And I would say, "No." Then I'd say, "Warden, I'm going to put my phone down, but I'm holding the line, okay?" He would say, "All right," and then I'd go and talk to Pat and tell him what happened. He would just sit there, and he was very quiet.

The execution was scheduled for ten o'clock in the morning. But I had made a firm arrangement with the prison people that they wouldn't start the execution for five minutes, just in case some judge wanted to stop it and his watch was slow. When the time was getting up there, the warden told me, he said, "Mr. Poole, I'm going to leave you now. I'm going to go and help escort the prisoner into the chamber, and the deputy warden here will be on

the phone to you." I said, "All right." I could talk to the governor easily; he was maybe as far as from here to the hallway down there [demonstrates] in a fairly large room.

Hicke: Twenty feet?

Poole: I guess so. He was at his desk. I don't know what he was doing, but he was apparently busying himself, and I would give him a kind of a play-by-play of what was happening. I said, "The warden has left and he has turned me over to deputy warden, Akuff, to monitor the phone, the line here." Then I began to hear this noise. It was a noise something like water going through pipes. I said, "What's the noise?" He said, "They run these pipes through to see--it helps seal the room." I said, "Oh." Then I heard a faint metallic sound. He said, "That sound you heard," he told me how they did it. They have this acid bath and the pills get discharged into acid bath. That gets the cyanide gas coming up and the reaction. So when that came up and the deputy warden told me what that was, he paused a minute and he said, and I heard it again, he said, "Mr. Poole,"-- It was a long time ago, but I still have to think of it. But he said, "The execution has begun. Tell the Governor no one can stop it now." I told the governor that, and he got up and walked out. He didn't come back anymore that day.

About three minutes into the execution, I heard a phone ringing in this warden's office where he was stationed, and I was cut in on it. It was Federal District Judge Louis Goodman, who was the chief judge of the district court there in San Francisco. He asked, "Has the execution started?" He was told, "Yes, Judge, it started." He said, "Well, you know, those fellows just came in to hand me this habeas corpus, and I had to see what it was." What had happened was the Supreme Court of California had granted them [the lawyers] an unexpected special hearing, which was announced at the night before, to be held at nine o'clock in the morning up at the State Building. It could have been 8:30, I'm not sure of this, but it was in the morning, and the execution was scheduled for 10:00.

And counsel got there and the Supreme Court of California heard them, and then I guess they took a recess for a couple of minutes, and then they came back and denied them. Instead of coming directly, or having somebody over there waiting to ask if they wanted a stay from the Federal District Court, they had a press conference. The press was there, and they stayed to chat with them, and Judge [Louis] Goodman said that they had just brought this thing to him. He had just looked at what it was, and so he came to try to stop it. I said, "Oh, my God." I had a pen in my hand and threw the damn thing down. One of my helpful

assistants reached over and broke my connection with the prison.
[laughter]

I tell you, I was about to go out of my mind, but my secretary--I've had some good people to help me in my lifetime--her name was Joyce McCreary and she was Australian born. Her husband was an engineer in Sacramento. Shortly after that, they left and went back to Australia. But she came back to this country. I don't know what's happened to Joyce since then. But Joyce said to me when I cursed, she said, "Be calm, I'll get it right back for you," and she did. She got the line back and the deputy warden said, "The doctors have pronounced him dead." So I said to him, I don't know who it was I was talking to, I said, "He's dead, he's dead, after all this time."

I didn't see Pat anymore that day. I don't think he ever came back that day. I think he got in his car and had them drive him somewhere. I got in my car and I was going to drive down here. I wanted to get out of Sacramento, but then I realized there might be some communication, some questions, and I probably better stay around to answer them, so I did. That's the way he went. It was something that I have never quite gotten over. When I saw Pat the next time, I'm sure it was the next day, I said, "I won't say to you what everybody said, which is that you tried, but you did." And he just shook his head, just shook his head. He said, "Do you suppose anybody thinks that this is a better world now?" I didn't have to answer him.

That was a very difficult time. I was there for another year, yes. That was, I guess, one of things that I had never been able to get out of my mind, the futility of that case, the futility. You know, you still have this problem of people believing that somehow the eye for an eye, tooth for a tooth is being manifested in capital punishment. But it's not, it's not at all. It's a feeling of malaise that people have, I think, and that is that we don't know how to handle this kind of thing. We don't really know, so the best thing to do is to do what we do. When we can't handle something, we get rid of it. That's how we face up to the problems that we can't solve. But we've made certain that this particular problem doesn't happen again.

Hicke: So the problem goes away, at least that particular one.

Poole: That particular problem goes away.

Hicke: Do you believe that the death penalty is a deterrent in any sense?

Poole: Deterrent to whom? It deters people who are not going to do it, I suppose. But that woman who walked into the courthouse the other

day up there in northern California and killed this man for molesting her child--you know, I'm not sure that we have the whole story yet. We've had several in the recent days here, in recent months. It's a simile that, I think, in some minds that they think that by doing this, there is some expiation of sin, and that while this may not stop anybody else from doing it, society has rid itself of a person not worthy to live among us. And that's the part that bothers me.

Hicke: That goes back to the ancient Babylonians, doesn't it, that eye for an eye?

Poole: Self judgment on it. And we do it all with a lot of ceremony, a lot of ceremony.

Hicke: Maybe that's a good place to stop for today.

Poole: Okay. Well, that was a tough time. Pat--you've seen his book?¹

Hicke: Yes, but not for a while. I read it quite a long while ago.

Poole: I don't read it anymore. But he was sort of caught in there. He would like to have been the governor who helped to end executions. But he wasn't anywhere close to being that.

I don't know. This woman walked into the courtroom and executed this fellow. There are all kinds of thoughts you have about that. I can make an assumption that he did what they charged him with. I can make that assumption. But, God, was it a good assumption, near assumption, or what? The press has gotten caught up on this with her, that she didn't fool around with it, she got rid of him. It's possible that man didn't have any people who were dependent on him or young children or hadn't done any good works in his life.

Hicke: We don't know that.

Poole: I don't know that at all.

Hicke: What do you see for the future of these kinds of situations?

¹Edmund G. Brown, Sr. Years of Growth, 1939-1966: Law Enforcement, Politics, and the Governor's Office, an oral history conducted 1977-1981 by Malca Chall, Amelia R. Fry, Gabrielle Morris, and James Rowland, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1982.

Poole: I don't see that any cessation of it is in the works for anytime soon.

Hicke: In California?

Poole: Not for California, and not for the United States, not for the country. Although, of course, you don't see executions in the federal side much anymore. What happened in that was there was a statute that did provide for the death penalty for murder and several other things, for espionage and all that. But most of them provided that for the commission of certain offenses, the punishment should be death or life imprisonment in the jury's discretion. The problem with that was there are no standards to tell the jury about what are the limits of your discretion that you have. And not having any such standards, that led the United States Supreme Court back in the good old days to abolish the capital punishment statute in most of the states, because all they said was, "Let the jury decide it." The Court said, "You've got to have standards," and that, I thought, was, in a sense, a failure to acknowledge our own needs. It wasn't a lack of standards. It was the fact that what we're saying is, When is it all right to take a human life? To take it with ceremony and pomp, all kinds of incantations, and high words, and writs, and charters, and all this, and then kill them.

I can understand soldiers. They're in the heat of battle. They fire, they've got a gun, and that's it. But we're not at war, are we? Well, I don't mean to preach.

Hicke: I think I've read that most other countries have abolished capital punishment, at least Western countries have.

Poole: Many have, I know that. And states--some of the states have abolished it. Michigan has been without it for a long time. You hear people saying, I'm a taxpayer and should I have to support this guy the rest of his life? [Laughter] That reminds me, when people say I'm a taxpayer. When I was first in the District Attorney's Office, for about six weeks I was supposed to learn about all the departments, and I was on what they called "the counter." That's where the citizens would come in and make these complaints, the barking dog cases and all that sort of stuff. They would come in, and I tell you, we learned something. "I'm a taxpayer." I'd say, "Oh, yes, by the way, we'd like to see your tax receipt. Do you have it with you?" [Laughter] They'd say, "What do you mean, have it with you?" "No offense, we can get it from the IRS." [Laughter] That was a great joke in the DA's office.

Hicke: That's excellent. Okay, well I think that's enough for today.

Reflections on the Death Penalty ##

[Interview 4: May 17, 1993]

Hicke: Last time, we had just finished with the Caryl Chessman case.

Poole: The last I saw of Brown that day was when he got up and walked out of the Capitol.

Hicke: That's when we last saw Governor Brown. I thought perhaps you could continue on talking a little bit more about the death penalty and your attitude towards it as it evolved in California.

Poole: Where I have had some real contact with the death penalty was back when I had been in the District Attorney's Office, because every now and then we would have a death penalty case.

Brown was opposed to the death penalty, but he did not make that a policy of the District Attorney's Office. So I compromised on that with mainly--at least my compromise on it was that we left that entirely up to the jury.

Hicke: You didn't ask for the death penalty?

Poole: No, no, I never asked for the death penalty; I left it up to the jury. I would tell them that the court will explain to you what the punishments are, and you, and only you, can make that decision. Only you. Keep in mind, this was before the United States Supreme Court had outlawed almost all the death penalty statutes in the country, because they did exactly what I told the jury they could do, and that is that it had to make up its mind in the situation based upon its familiarity with the evidence, with the nature of the killing, the legal punishment that the legislature had provided for, which would be that the person who is guilty is punishable by death or life imprisonment in the discretion of the jury, and that no one other than you collectively can make that decision. For me to say, Go ahead and do it or not to go ahead and do it is to interfere with your function.

I always felt a little bit sheepish about that, you know. I thought that if we weren't going to do that, I should be able to say to them, "The infliction of the punishment of death is based upon either a despair that this human being can ever be regenerated or is based upon anger that he did what he did, and in either case, it has been put in your hands, but you ought to

search your consciences very closely to decide if you're going to advance humanitarian causes of the world by taking this life." If you said that to them, you'd get a lot fewer death penalties. I can say that now.

But I think I had myself, personally, tried only two cases that actually were death penalty cases, murder cases, and a lot of prosecutors would take a simple murder case and elevate it into the most heinous thing you had in the world. Well, I didn't.

One of the cases that I remember was the case of a defendant who lived in rooming house in San Francisco. The rooming house was managed by a woman who, in addition to her office in the complex, had two bedrooms: hers and her thirteen year old child's. One morning she woke up and she thought she heard some noise, and she looked in on the child's bedroom and the child was not there. So she called and there was no response. Then she awakened other people in the house in a panic, and they looked in all the rooms except one--that room was locked. They didn't find the child, so they broke in the door, and the child had been horribly murdered. You can't believe it. He slashed off both of her little breasts. I won't even go into any more of it to you. It was just as horrible as it could be. They had called the police and the police responded to the scene. The police put out an immediate bulletin.

Anyhow, there was a Greyhound Bus Station on Seventh Street just across from the old Court of Appeals, and that's where he was. He was in there washing his hands and he had blood all over himself. The policeman said to him, "Why did you do a thing like that?" I remember his response was, "It's the wine, man, the wine does crazy things." That's a case I prosecuted, and I told the jury at that time just about what I've said to you. I told them that you should listen to the court's instructions, you should listen to their arguments. Listen to what counsel for the defendant has to say to you, but remember, it's evidence and not oratory that we're here for. I can't remember how long the jury was out. In that case, they gave the death penalty.

There was one more that I remember being in the office, but I didn't personally handle it. There weren't nearly as many death penalties then as there are now. One thing, in 1972, I think it was, the Supreme Court held in a Florida appeal that almost all state death penalties were molded on the same kind of frame, which left it entirely up to the jury. The Court said that to take the life of a human being, you have to weigh the factors of life, and you have to do it in the way that the statute commands that you do it, not because some lawyer argues that you should do it, but because of the statute. It threw the federal statute out and

almost all of the state statutes. It took them some years to get back to it.

More on the Chessman Case

Poole: For example, Caryl Chessman: the offense that Caryl Chessman was accused of involved no taking of life. He was known as the Red Light Bandit of Mulholland Drive down in Los Angeles. He had gotten a red light that he put in his car, and there was a kind of a lovers' rendezvous from the height up over Los Angeles. He would go there, and he would see a couple in the car engaged in romance, and he would come up with a gun and he would rob them sometimes.

Hicke: You told me he never admitted to that, and, in fact, he said it was somebody else.

Poole: He was the somebody else. I don't have the slightest doubt in the world. A lot of the people who argued against the infliction of the death penalty on him cited to his disavowals of it. Most people assumed that he had done it. But there was some weakness in the identification of some of them. But he was stuck with that one.

Hicke: I think that I've heard that he was the last person executed in the state for something other than a murder. Maybe you told me this.

Poole: Yes, he was. That was Section 209 of the Penal Code of California; it was what was called the Little Lindbergh Act. Remember the Lindbergh child had been kidnapped by Bruno Hauptmann. In the wake of that kidnapping, as controversial as it was, to his dying day he denied it, and then his widow carried on the fight after him. The California statute that was enacted was essentially a kidnapping statute. It was called the Little Lindbergh Law.

Hicke: That's what Chessman was charged under?

Poole: Yes, and, as I say, it was in Section 209 of the Penal Code, and it provided for death in the discretion of the jury.

Hicke: But then was that changed after his execution, that section?

Poole: No.

Hicke: But nobody else was ever prosecuted under it?

Poole: Nobody was on death row on account of that. This was in May of 1960.

Hicke: Yes, we've pretty much covered that case.

Poole: But I left the office a year later because I became the United States attorney. I'm quite sure there was no other execution. I'm sure there wasn't. The outrage and the howl that came up from the Chessman case--I don't think Brown would have gone through that again at all. It provided that a person who did kidnapping would receive a life imprisonment sentence, and I think it was life imprisonment without parole. It further provided that if the victim received physical injury, then there would be death.

Hicke: Yes, you explained that to me.

Poole: Yes. The Supreme Court of California had previously decided a case in which the victim had been tied up so severely, so as to constrict the flow of blood, and in the effort to try to either get out of the bonds or some get surcease from the pain, the rope burned, and actually some blood came out. The Supreme Court held that that was an injury, and under the statute it called for the death penalty. My recollection is that after that one case nobody until Chessman was given the death sentence under 209 where there hadn't been a death. Because there was forced move of the person, the Supreme Court held two things: they held that this sort of thing--any substantial injury or any letting of the blood, and so forth as a consequence of the injury--and held also that the element of the crime, the transportation element of it, didn't have to be any particular distance. In Caryl Chessman's case, in one place he moved the person, I think it was like nine feet, from one car to the other. In the other, it was about three-quarters of a mile.

Legislating the Death Penalty

Hicke: Let me get back to why there are more death penalty cases now. Is that what you said?

Poole: Remember that the Supreme Court held a lot of those cases unconstitutional. It took a long time for the states to get legislation that comported with the requirements of having the jury weigh and determine the mitigating factors, if any, against the non-mitigating factors, or the aggravating factors. So they

had to do this, and they didn't do it very well at first because they still wanted to stick it to the person, have some advantage for the prosecution. Remember that was a Court that had been the Warren Court. It took some time, and the cases just backed up on them because when they finally got the statute that would pass muster everybody was appealing everything.

Hicke: What did the statutes do, after the states got the statutes?

Poole: The statutes provided, as I say, for the jury to consider aggravating factors--the factors that made him a bad person, in effect.

Hicke: So, they sort of implemented this opinion?

Poole: Keep in mind that the statutes were evolved over the years by what the Supreme Court let stand and what it didn't let stand. So even though they tried right after the Florida case had outlawed the substance of most of these death penalty statutes, and the legislatures rushed to put something in its place, they didn't do it well. They put in something that, on the face of it, looked as if it was requiring standards for the jury to determine. In fact, it was mostly a lot of words that they were doing. So these statutes received scrutiny in other cases as the years went on, and pretty soon it got to the place where, by the way, they are still--in transition. They still are. They now uniformly set up a procedure by which the jury is required to articulate which factors they find to be the aggravating factors and which are the mitigating factors. It's sort of like they get a special verdict where they have to answer these questions, you see. Those cases which the Supreme Court has allowed to go through, and there are a lot of them now, are cases in which the statute itself is challenged. Arizona has had some of its statutes challenged within the last three years or so. The California statute was challenged but not successfully. [Robert Alton] Harris went to his death.

The counsel for the lawyers would bring up these cases repeatedly. They would bring a habeas corpus case based upon something, and they then would put that in a different form. So the Supreme Court has been knocking down these objections, saying that, in effect, when you have a habeas corpus case, you've got to set forth all of the complaints that you have or reasonably can be expected to know about. If you don't do that, then you're presenting--and if you come back again after you've already had one try at habeas, then you have what they call a successive petition. The Supreme Court has been angry at the lower courts, our court [Court of Appeals for the Ninth Circuit] and others, because they say that we've disguised it in some other similar

successive petitions. I think the Supreme Court is weary of it, and I think that they're really hard-nosed now on it.

Hicke: Does mandatory sentencing come in here?

Poole: Mandatory sentencing?

Hicke: Is there any mandatory sentencing regarding the death penalty?

Poole: Well, if the jury found a single mitigating factor, it could, if they really want to, turn this guy out of the death phase. It could find that this single mitigating factor was sufficient to nullify the aggravating factors. And if that's so, that would be its verdict. Nobody can do anything with that verdict. But jurors generally are not--these are horrible cases--the jurors look at them, and I think a whole lot of the jurors feel that, well, you know he's had his day in court. He's been in court many times. We're going to have to support him for the rest of his life if we give him life imprisonment, and it's a terrible thing that he did.

Now they've introduced the fact that you can also bring into the courtroom, into the trial, the impact upon the victims' families and loved ones. So they can get up and cry and whoop and holler. I think that's the damndest thing they ever did to those statutes. The whole idea is to let the victims' loved ones, who are there for revenge-- The father of the boys in the Robert Alton Harris case was there at San Quentin that night. He came to be a witness to the execution. And boy, after it was all over, he came out and he said he was on his way to Sacramento because the next morning they were going to have breakfast meeting of those people who belonged to the victims--some kind of a victims' organization they have. He was happy.

Hicke: Yes, that's revenge.

Poole: Oh, it's revenge. It's revenge, and we don't know what else to do with them. You see other things. Every time people start talking about penalties less than death, the argument is made that you the taxpayers will have to bear the burden of his support for the next twenty-five, thirty years. He didn't give those two little boys any--

You asked me how I react to it. Well, I guess the fact really is that in many cases, except those that we have in this court here that I've become personally involved in, I just have to kind of shut them out.

Hicke: Shut them out?

Poole: I read about what happened in Florida or Maryland or some place, and I look to see just how horrible was it. What kind of person was this? If you get a guy with an IQ of about eleven or nine and they're going to execute him because he's physically able to do something horrible, I don't want to read about it. I just shut it out.

But when I get the cases that we have here--the minute that we started getting things like this, I tell you--I just got rid of some of it the other day. They were sitting back over there [gestures] and that was a stack this high [gestures]. That was a case in which the young fellow said he didn't want any lawyers to try to reverse the death penalty or get him out; he wanted to go. He hired, or somebody hired for him, a lawyer whose only function was to reject any application for leniency or last minute application for reversal. That was his only function. Then his mother filed a petition, and the state of Washington said that his mother was not a party to this action. She had no standing. Legally, that's true if you were talking about a guardianship, for which she had not been appointed. These are arguments that you listen to or you tolerate only because you've made up your mind. Your mind is already made up.

Our functioning in these cases is usually whether the last minute argument that comes up makes this a successive petition. The theory that the Supreme Court has articulated now is that the whole idea is to confine you to one bite at the federal apple, and if the supreme court of the state for any reason wanted to stay an execution, it could do it any time it wanted to. The Supreme Court has nothing to do with that. But the habeas corpus is provided for in our Constitution, and it has always been known as the great writ. It is the writ that can be the great protection of people who might otherwise be part of a despised group.

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Poole: It was used a great deal after Lincoln had entered the Emancipation Proclamation, in the next fifty years that followed, where the former slaves, their descendants, or families were often the victims of mobs and that sort of thing. They were used in a kind of a pristine sense then, because habeas corpus or a resort to the federal court could be for the reason that they were being denied equal protection of the laws. I remember at one of our symposiums, Justice Marshall, who passionately believed that the writ of habeas corpus was being minimized by this court, said so.

Hicke: You mean the Ninth Circuit Court?

Poole: No, the Supreme Court of the United States. And he said at one of these meetings [laughs] that when you get proper case and the judge won't grant it, he ought to be shot.

Hicke: And you said the death penalty policy is still in transition. Where have the courts been going with it?

Poole: Well, they used to hang most of the people. Sometimes justice didn't wait--they'd shoot him on the spot. Montana still does it by shooting, and there are still two or three states that do it by hanging. One of the arguments made in the case we have, which is Campbell, is that Campbell has long ago crossed into successive writ country. [Laughs] Some of these guys are very ingenious. He has hired and fired lawyers on, I would say, at least four occasions since we've had this case. What he does is, he started off charging his lawyers with incompetence. When he filed his first writ of habeas--well, he did it to the Washington State Supreme Court first, and then it came into California. It came to our district court in Washington, and he charged his lawyers with incompetence because they didn't make the arguments the way he thought they should have been made, and so forth, like that. Naturally, he's before the Washington State Supreme Court and he's charging his trial lawyers with incompetence, they can't defend him. So the Supreme Court of Washington appointed counsel for him. The Supreme Court then denied his petition.

He then came to Seattle, to the district court in Seattle. Actually, this was the second time he had been to the district--habeas corpus in the Ninth Circuit. He had done so the first time, oh, I think it was back in about 1987. But he came, and this time he asked the Ninth Circuit Court, asked us--it was a three-judge panel and I was on the panel--he asked us to allow him to make some arguments that his lawyers, because of their incompetence, had not made. Then we got notification that some law firm had been contacted by Campbell, who asked them to represent him. They did. They entered and they filed some papers there. We got ready to have an oral argument on it, and he fired them. [laughs] He's been doing this ever since he's been here. Games are played on both sides of the line. The real deep down problem we have is that the judges and the authorities in the state convince themselves and the courts that these people on death row are all playing the same game. So it becomes easy for some prosecutors to simply shrug it off. The guy is just trying to beat the chamber.

Now, the state of Washington punishment was by hanging. One of the things that Campbell argued was that to inflict the punishment of hanging on him was cruel and unusual punishment, because first of all, he said they didn't have a competent hangman

up there. If they don't do it right, instead of breaking the neck and rendering the fellow for all intents and purposes unconscious, he'd just be in agony. So they hired somebody who was supposed to be a competent man with the rope. See, there's a big knot they put in, and when it goes down, it's this knot that breaks the neck.

Hicke: It's an unusual argument.

Poole: They then changed the statute in Washington, and they left hanging in, but they gave the alternative that the prisoner could elect to have the poison needle injection. Now I don't know how painless that is. But in any event, Campbell then filed a new writ. He said it was cruel and unusual punishment to put him to making the choice. [Laughs] So you can go on and play these games; they go on forever. They're pretty serious. That case is still around here. I think it's going to come to a head pretty soon.

Hicke: Do you think these cases are going to get to be more and more of a burden on the court?

Poole: The Supreme Court has really been very stern with it, or it certainly has been with our court. They think we're the sucker court of the country. Nobody here feels any sense of disgrace. Someone came to see me one day, and he said, "By the way, not for attribution--" I said, "When you say that, it means that you're going to describe everything about me except my middle initial." [Laughs] "No," he said, "no, no, no." He said, "What is your response to the way the Supreme Court of the United States has kind of stayed awake at night?"

We had the Robert Alton Harris case. I was down here until late at night, and I had two law clerks that were here until one o'clock in the morning. I went home, I was exhausted, and they were to keep in touch with me. That case was stayed twice that night, and we voted on it a couple of times that night. The Supreme Court each time lifted the stay. After they had lifted the stay, all of a sudden there was still another order prohibiting the execution. It was done by Harry Pregerson, who lives down in southern California. Then they'd say, "Who is he? Is he on this court?" I'm watching it on television at home at this time, and it was really a mess. The Supreme Court, at that time, issued its final order. Oh, pursuant to Harry Pregerson's order, they took him out of the cell, I mean out of the [death] chamber. They took him out of the chamber.

Hicke: And took him back to his--

Poole: Back to the holding cell. When the Supreme Court got that, I would like to have heard what they really said back there in Washington. They said, The order is vacated and the Ninth Circuit will make no more orders in this case without permission of the Supreme Court. This newsman asked me, "What do you think about them?" I said, "I wouldn't give a damn what the hell they said. If I thought it was a proper order, I'd make it whether they liked it or not. What are they going to do?" Anyhow, he didn't print that. [Laughs]

Hicke: And you're still here.

Poole: I'm still here, yes. Some of these cases are terrible cases. Some of the things that are done are awful cases.

Hicke: But--I think we talked about this before--you don't believe it's a deterrent?

Poole: Well, the people who don't commit crimes are deterred. But the people who commit the crimes are not. Yesterday morning, somewhere down there near Fresno, wasn't it, somebody went into a tavern and shot and killed seven people.

Hicke: It didn't deter him, did it?

Poole: Seven people. I must tell you that there is an exception in my thinking about some kinds of cases. A person who kills a child, a person who tortures or otherwise subjects to excruciating pain another person who has been rendered helpless--I close my eyes and turn my back on those. I simply can't stand it. I can't adopt some rational way of accepting this as not being a forfeiture of the right to exist. We don't have a very high order of qualifications in this life, but it's higher than that.

Hicke: That sort of disqualifies someone from being a human, right?

Poole: Yes. For example, someone said, "How do you feel about this woman who killed the person who was charged with molesting her young son?" Well, I figured that she was enjoying it. I figure she walked into that courtroom, deciding, and she was accepting all the bows.

Hicke: Are the state and the courts in agreement in the trend toward more capital punishment?

Poole: Oh, I think so. I think for the most part the states are. The judges are in division. There are some judges who, I suppose, logically are saying that devising punishment is the function of the state, not of the federal courts. We may think that it is

uncivilized for the state deliberately to take the life of a human being. But we have no right to attempt by judicial decree to deprive the state of the function of decreeing what is punishment for punishable conduct. It's an interesting philosophical question, just as the whole idea of the death penalty is a philosophical question. We have stopped, for the most part, inflicting certain punishments for certain kinds of offenses. We don't do it for somebody who steals a tremendous amount of money, although I think in their heart of hearts, a lot of folks would think that would be where you'd start.

At one time, in most of the states, they had some form of death punishment. Some of them had hanging, some had shooting. It wasn't until lately that they devised these poison needles for them. We had some argument in our court on one matter, and the point of the debate was who has a right to say that the death penalty by hanging or shooting or by the needle is unconstitutional, in that it amounts to cruel and unusual punishment. My response was, "I suppose if all the states in the United States abolished hanging for the reasons that are ascribed to the arguments to get rid of the hanging--because it often goes wrong and there is a tremendous amount of suffering--if almost all of the states have abolished that, then a state that still has it would seem to be outside the mainstream. If it's outside the mainstream, then we look at it and see whether it is cruel and is it unusual." That second component, the unusual nature, would be determined by whether the states themselves have said "no more of this for us." I would assume that it's like other things that we've gradually abandoned. We don't cut off their hands now when they steal or pickpocket. It's a difficult question to answer because it makes you go back to the Constitution and say, "What does this mean?" Is this sort of like a promise to the states, that if you believe that a certain form of punishment is the appropriate one and everybody else believes something else, you have to change? Who's going to make that stick? I don't know.

Hicke: Does it have to be both cruel and unusual?

Poole: Yes. That's the language that the Constitution uses: cruel and unusual. I think it's intended to keep from pulling your neck bit by bit and that sort of thing. So that's why many of the states have now adopted the alternative that you may elect the needle. The way the legislatures have passed the laws, they've made the primary punishment to be a lethal gas or electrocution, but at the option of the prisoner, he can get the needle. I suspect that the reason they do it that way is because they want to keep the punishment certain. That is, you may go off on an excursion and let the state finish your life by the poison needle if you want to do it that way, but if you don't do it that way, then you have the

hanging or the electrocution or the poison gas. They want to make the prisoner participate in his selection of the appropriate penalty. That's what prisoners are now arguing.

Hicke: How far are they going to get with that?

Poole: It's sort of like everyone ought to have some right to have a say about how he exits this world.

Hicke: Yes, you could look at it two ways. You have the freedom to choose.

Poole: Freedom of choice, that's right. Those cases, for many judges, are very difficult. I can't remember that there's been a case on our court where a judge has recused herself or himself from sitting because of internal scruples about capital punishment. Most of the judges, I think, feel the way I do, that it's a distasteful thing to have to do, but that's why I'm here. I have only recused myself from any kind of cases where I felt that my relationship with a party was such that either I could not be unbiased or that I could not deny the appearance of partisanship.

We had one; you may have read that the other day this court filed its opinion against Judge [Robert] Aguilar. I haven't really read it carefully yet. It's got a whole lot of confusion in it. In any event, I recused from sitting on that case, and I did so because Aguilar was appointed to the district court just after I had been appointed by President [Jimmy] Carter to this court. I had been on the district court before. So he came, he was confirmed, and I still had not moved out of the Federal Building. I would see him very frequently in our luncheon room there. We'd chat and talk about things. I said, I personally think he's a vain person. That's what got him into the situation that he's in. I had no difficulty sitting on any opinion that he wrote that was up before me for review, but I just find it hard to say that when you sit at lunch or at meetings countless times and joke with a guy, that you don't have some kind of a slant.

I did the same thing with Judge Harry Claiborne of Nevada, who was indicted for income tax violation. I had sat on cases with him, and I found him quite a jocular fellow. I notified the court that I would not sit on his case. I think there was probably another reason as well that I had, which was that I had some pre-formed opinions about some of the things that had been done by the government. I didn't want to have my old memories of what I did, of how I thought you were supposed to do a prosecution--I didn't want to have that mixed up with this thing, so let me just stay off that case. So I did.

Hicke: Do you think we've covered the death penalty? Is there anything else?

Poole: I don't know what its future is. My guess is that they will devise swifter and more certain ways of extinguishing people as time goes by.

Hicke: Is this what we call progress?

Poole: Well, there'll be an instant before the punishment is administered and then oblivion. Just put them out of the world. There's a human being that doesn't exist anymore.

Responsibilities in the Brown Administration: Extradition

Hicke: Let me get back to the late 1950s when you were legal counsel for the governor. We were up to Governor Brown.

Poole: Well, I went there, remember now, in 1958.

Hicke: Fifty-eight to sixty-one.

Poole: Yes.

Hicke: So in that period as legal counsel and clemency secretary, what else is there that we should cover? I know you covered a lot of it in your other interview.¹

Poole: I had three primary functions: one was legal counsel to the governor, that's a miscellany thing job; then extradition--California was doing around 1500 of them a year--and then the clemency function. And, of course, anything else that he wanted me to do.

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Hicke: You said you had a lot of extradition cases. Can you give me an illustration?

¹Cecil Poole, Executive Clemency and the Chessman Case, an interview conducted by Eleanor Glaser in 1977, in "The Governor's Office Under Edmund G. Brown, Sr.," Regional Oral History Office, The Bancroft Library, University of California, Berkeley.

Poole: The extradition process is one in which a person who has committed an offense in another state is found in California, and the demanding state seeks to have him removed from California back to that demanding state. There were tremendous numbers of those, and mostly they were routine, where they'd find them, and they'd identify them, and we would get the papers. The Attorney General would collect all the papers we needed for it, and I would look them over, and we'd see nothing special about this case. Most of them were petty stuff. Occasionally, there was something of importance. If there was some reason why the governor's attention should be particularly directed to a case, I would let him know. For example, we had a number that came up out of the southern part of country. You would have some person who was, let's say, a black person who was being charged with some kind of offense, which might, for example, be that he was uppity. [Laughs] That's an expression to use. He's uppity.

Hicke: In the formal charge?

Poole: No, no, no, no. That's the reason they brought the charge. They would bring it-- For example, let's say he had a fight with his neighbor; he's black and the neighbor is white, and they have a fight, and he gets charged. Suppose in the heat of the struggle the other person is seriously hurt, and so they want to bring him back. Interested people then on both sides might start a clamor, and we would get information that would indicate, for example, in an extreme case, that there had been threats on the fugitive's life, either in or out of the prison, and that sort of thing, or somebody had escaped prison, and he had horrible tales to tell, and there was some support for some of it. Though the statutes say "shall," nobody can force the governor to yield up a prisoner. Most of the cases were pretty routine--a car theft, a burglary, a fraud, and that sort of thing. They were pretty routine, but we'd get a number of other cases.

I remember we had one person who was from Pennsylvania, my old state. He got into an argument with another person. These were both two white men, and they got into an argument with each other and one took--I've forgotten what weapon he used, but he had a weapon of some sort. In the course of it, in what he said was self defense, he fired and killed the other, and then he disappeared. Twenty years later he turned up down in the Fresno area. He'd been there all that time. He was married; he had a couple of children. It was more than twenty years, because I remember what happened was he retired from his job, and they had a little celebration honoring him, and that's how it got back to Pennsylvania, and they wanted him back.

So I talked on the telephone to the folks back in Pennsylvania a number of times, and I said, This guy has been down there a long, long time. They gave him a watch, you know. His service had been exemplary; he was well liked; he contributed to his community. Nobody had the slightest idea that this fellow had this record back there. I said, "Can you see it in your heart to forego taking him back?" Well, they got all tough and said, "We have a duty to protect the citizens of Pennsylvania."

I said, "You're going to protect them by bringing him back--a pretty good guy that you're going to put in jail." Anyhow, I talked to Pat about it, and the Sacramento Bee ran quite a story on it. I said to Pat, "I think we ought to hold a hearing on this one." We would have a hearing if one of us thought it was necessary.

Hicke: If there was a controversy?

Poole: Well, yes, if it was a hearing that I thought the governor ought to conduct, I'd let him know and he'd conduct the hearing. The guy came over from Pittsburgh, Pennsylvania, and I asked him, "Tell me, is that terrible, old, granite-brick jailhouse downtown on Smithfield Street still there?" He said, "You know about it?" I said, "Well, I haven't been confined in it, but it's one of the worst looking prisons I've ever seen."

After hemming and hawing around when they saw that we weren't really going to let them take this man and walk him back there, they made a deal with me. They said, "Suppose we do this. Let him come back to Pittsburgh. We would change the charge to involuntary manslaughter, and he will not have a day in jail." So I thought about it, and I talked to the son, and I said, "You know, he's had all these honors." He wasn't made the citizen of the year, but he had been a good solid, reliable person down there and they liked him and he was highly thought of. I said, "Everybody knows about him now. If he goes to New Jersey, if he goes to Arizona, they could put in new papers for him. Somehow, what you have to think about, I think, is whether it's better for him not to have to relive any of that stuff, not to go back there, although he will live in some jeopardy, or take them at their word. They'll do what they say they're going to do, because I demanded of them that they tell me that they had some preliminary discussions with the district attorney back there and everybody else, and they gave me their word." But what they did refuse to do, they would not dismiss the charge unless he came there. So I said to him, "Now this is what they've said. It seems to me that you have redeemed yourself sufficiently in their thinking that what they really want to do is to win this one by having gotten the conviction."

Hicke: It was a matter of saving face?

Poole: Yes, but they told us that. On the phone, they had me talk to the district attorney of Allegheny County. That's Pittsburgh. I talked with him, and he said, "We're working on that. We haven't gotten this worked yet, but I'll tell you what. We'll wait until we do get it worked out. Then I'll get in touch with you and let you know." So, the guy went back down to Fresno, and the other guy went back to Pennsylvania. He called in about a month. The story had gotten quite a bit of currency. The Pittsburgh press had run some stories on it. They said it was okay, so he went there and then came back.

Hicke: It takes a little courage, I guess.

Recollections of Jesse Unruh and Other Legislators

Poole: Yes. Then, of course, I worked on a lot of the legislation that was kicking around. I remember, I was quite friendly with some of the legislators. Oh, Jesse Unruh. I knew Jess. I was on good terms with him. I could talk with him about things that we weren't going to agree on, but at least we could discuss, and he welcomed the opportunity to tell me why he felt so strongly about certain things. These were non-pejorative sorts of things. He would give me a picture and tell me why he thought this tax was regressive, that tax was no good. I would tell Pat about it, or I would tell some of the other people in the governor's office who might be working on that thing, what Unruh's feeling about it was, and so forth. I got along with Jess pretty well.

When I left the capital after I had been confirmed by the Senate, Jess gave me a three-by-five card that he had typed on, or somebody had typed on it for him. It said, "In all things remember, let thy aye be aye and thy nay be nay, lest ye sink into perdition." What he was really saying was that one of the things that in the world of politics and government is important is your word. When you give your word, you don't do it lightly, and when you give your word, you mean it. He thought that credo was one that I had followed. I felt quite honored to have it.

I found out later on, much later, that that actually is, with some little change in it, a part of the Bible; I think it's the beginning of the New Testament of the Bible. Yes. I've been meaning to look it up. My father, who was a pretty devout person, left me his Bible when he died. It's a wonderful book. It has

soft leather on it, and it has a concordance on it. You can look up any quotation you want, and I still have it.

When I was in college in Michigan, I took a course in the college--we called it the lit school. I took a course that was on the Bible as literature. I found that it had some beautiful literature in it, just absolutely beautiful literature, and so I've preserved that Bible and kept it. It has his name embossed in gold on it. I remember that the fall of Lucifer was quite an event. [Laughs]

Hicke: Very dramatic. Are there any other legislators that you remember particularly?

Poole: Oh, sure. I knew many of them from all over the state. The legislators' battles were not fought over questions of redistricting and that kind of thing. The battles got very warm when, for example, the governor had a tax measure that he wanted to get through. "Not against my clients, you don't do it," some of these legislators would be saying. "Not against my constituents, you're not doing this." One of the great contributions that Pat made was when he got the water bill through. That took a lot of doing.

Other Duties

Hicke: Were you working on that with the legislators?

Poole: Yes, oh yes, sure, we worked on that one. Finally, I went down when President Kennedy came out and dedicated the dam down there, near Salinas. It was quite a thing. We had a lot of battles of that sort, and they'd be fought. There were taxes on specific kinds of products, the items of the budget.

Hicke: Money for education?

Poole: Oh, yes, yes. Brown had an ambitious program, and he really worked hard on it. He went all over the state with those things. We brought some scientists out one time when we were talking about revising the laws on insanity. We met them down at San Luis Obispo. We flew down in The Grizzly. The Grizzly was an old World War II DC-3.

I met a lot of philosophers and experts along those lines. It was really very interesting. I was down there for three days. I did a lot of travel. Once he sent me to New York to talk with

some of the people in Governor Nelson Rockefeller's office. That was an interesting time. I saw how their office organization was. I came back and I told Pat, "They are more formal than we are. A lot of the people on the staff don't get to go in to talk to the governor." He said, "Yes, I can see how they do that."
[Laughter]

Hicke: Too late now.

Poole: Yes.

Hicke: And I think you wrote speeches for him, didn't you?

Poole: Yes. In the water battle, I wrote one of the speeches that he gave. I wrote a number of them for him on things like capital punishment. In fact, I came across some of those papers some months ago--a speech that I wrote for him that he gave in Los Angeles at a large meeting. I've forgotten which one it was now. He liked it. We talked about it when they were interviewing him for his book a few years ago. I told him that I, somewhere in my digs, had the original of that speech that he made, which he still remembered.

I had to meet with a lot of different groups and organizations and people. If the governor couldn't come, they wanted somebody else to come. Sometimes they would ask for me to come. I would go down to San Diego, or I would go to Los Angeles, Santa Barbara, wherever it was. There was quite a bit of travel at times.

Hicke: Did you have something to do with advising him on his appointments?

Poole: Oh, yes. I knew a lot of people. On things like on the courts and matters that might be related to legislation, to the laws, in an effort to get some kind of balance on them, we would go over those things very often in the staff meetings. Sometimes he would call me on the phone and ask me if I knew so and so, and so and so, and what did I think about them? I would say, "What do you want to do with him?" He would say, "I want to put him on this or that committee or this or that commission."

California State Highway Patrol

Poole: One thing that I did with Pat was we made the first effort, took the first steps, in changing the coloration of the California Highway Patrol. There had never been a black highway patrolman,

and we started getting them. I went down there and talked to the head of the patrol, he wasn't very happy. He said they picked them for their ability and their suitability, not because of who they were. I said, "That's what you think you're doing, but the fact is that you are not free just to do that. This is not just some private patrol group. This is the California Highway Patrol system." It was a delicate thing, because the commissioner himself made a whole lot of speeches. I said to Pat, "You're going to have to remove that guy."

Hicke: He made speeches--

Poole: The head of the Highway Patrol was a very popular figure in the state. He would be going to the Kiwanis Clubs and the business clubs and everything. He was a very important man. He didn't like anybody telling him what he was supposed to be doing. I said, "The governor expects that the opportunity to serve in the Highway Patrol is going to be available to other qualified citizens; you notice I'm saying qualified. There are a hell of a lot of them who are." So we appointed the first one. I saw him about ten years ago, and he came over to me, and he said, "Do you remember me?" And I didn't. He said, "I was the first of the black highway patrolmen that you got in there."

Hicke: When was this--'59, '60?

Poole: Yes, this would have been about 1960. Maybe '59. In 1960, a Democratic National Convention was held at the Coliseum in Los Angeles. That was one in which John Kennedy emerged as the Democratic nominee. I had my assignments to work on some things down there, some people, some of the delegates, some of the legislators who were delegates and who were pretty mad with Pat for one reason or the other. We agreed that I would drive one of his cars. Pat had up in Sacramento two large Cadillacs, and there was one down in Los Angeles. He wanted to take one of the cars in Sacramento and bring it down there and bring the other one back up. I've forgotten now just why he wanted to do that.

In any event, I went down. I drove the Cad and took my wife Charlotte and our two kids. We were driving down there, and I had noticed in the rear view mirror that there was a highway patrolman who was tailing us.

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Poole: I had difficulty manipulating the radio. It had this shortwave radio in there, but I had some difficulty with that, and I thought, Why, that couldn't be for me. Finally, the guy passes me, and he's looking over, and I'm waving back at him. [Laughter]

So when we got down pretty near to Fresno, I think it was, I went by the highway patrol quarters. It had a sign on the highway where it was, and I went by there, and I went inside, and, of course, I walked in out of this Cadillac. They wondered what the hell this guy is doing. I introduced myself to the dispatcher, and I said, "You've got a guy back there on the highway who is about to bust a gusset or something because he can't figure out how I got hold of the car that he knows belongs to the governor of California." And I introduced myself to him. I said, "Would you do something for me? Would you show me how I tune in to the Sacramento headquarters so I can tell them to tell this guy to lay off?" [Laughter] So he got them on. He called them and they said, "Oh, we thought you weren't going until the next day." I said, "No, we decided to go today. Tell them I appreciate their company, but they're trying to drive by as if they don't even see me." That was funny. So, we got down there.

Family Life in Sacramento

Hicke: How did you like life in Sacramento?

Poole: I liked Sacramento, but it was no exchange for San Francisco for me. But I had bought a house up there. The idea of running back on the weekends to see my family was out of the question. We first rented a house up on Summerville Road and then I bought a house and we lived there. I sold it after we left. Sacramento is a lovely town, but if I hadn't been there immersed in activities like I was, I don't know that I would have been terribly--Billy Coblentz was a special counsel with us for a while. When I first came up there, we came at the same time and shared an apartment, he and I. The landlady made every effort to pretend I wasn't there. [Laughter] She never said a damn word though. Then, after he left, I rented a house on Summerville Road and got it ready, and then Charlotte came up with the girls for the summer. Then I bought a house and we moved up there.

Hicke: When were the children born?

Poole: One was born about 1954, I think, and the other was born about five years later, both in San Francisco.

Hicke: The one that was born in '54 would have been about fourteen. And the other was five years younger.

Poole: Yes. The other one went to a little elementary school. She had started something they had up in San Francisco. It was really a

kind of a private nursery school that she had gone to. Then she went to a public school not too far from where we lived on Lancaster Way.

I liked Sacramento as a town. It's a pretty town and I liked it in that sense. I missed being in San Francisco though. Although there was a lot of action up there, a great deal of it, and we'd get busy as we could be--and it wasn't very far--it was not a place that I really wanted to stay the rest of my career.

Hicke: I think this is a good place to stop. Next time we can start with your move back to San Francisco.

Poole: I moved back when I became U.S. Attorney, yes. We got back. We had rented a house in Ingleside Terraces. As a matter of fact--Is this still on?

Hicke: Yes. Do you want me to turn it off?

Poole: No, that's all right. It doesn't have to be turned off. I want to see how far I can reach on here though. [Walks around the office with the lapel microphone attached] All right. I think I may have what I'm looking for over here. It's in here, but I'll dig it out for you the next time.

The General Services Administration in Sacramento--I had seen some photographs that they had made and I had wanted some for my office up there. So they brought some pictures like this.

Hicke: Oh, that's a picture of the [Golden Gate] Bridge.

Poole: The bridge, and there's another one there. Then actually, "Listen, do you people ever take pictures of the area around Stonestown?" They said, "Probably so." I said, "Would you see if you could find one like that and let me take a look at it?" So they brought me several, and one of the pictures that they had taken shows the Stonestown area and my house. [Laughter] So I had them blow that up. It's in here some place. I'll find it. I enjoyed that.

V UNITED STATES ATTORNEY FOR NORTHERN CALIFORNIA, 1961-1970

[Interview 5: June 17, 1993] ##

The Office in 1961

Hicke: At the end of the previous interview you had just moved back to San Francisco, and you took up the position as U.S. attorney here. I wonder if you could start out today by telling me what the situation was here in the U.S. Attorney's Office and what your primary challenges were.

Poole: Well, I was appointed by President Kennedy to become the United States Attorney for Northern California. At that time, California had two districts, a northern and a southern. The northern district went from the Pacific Ocean, of course, to Nevada. It went from Oregon on the north down to San Benito to the south. The other district was the southern district. Eventually, Congress made four districts out of them, instead of two.

This was in 1961, and the two things that were happening were the problems of integration and struggles--the freedom riders and that sort of thing--which took place in the South. Remember, Eisenhower had the problem with the school system in Little Rock and had called out the National Guard. People like the governor of Alabama had stood in the schoolhouse door and said, "Never let them in here." The effect of that on people out this way was that it gave a lot of people who were hungry for some kind of an issue an opportunity to focus on the shortcomings of the government, and society, and that sort of thing.

At first my offices were at Seventh and Mission. That's where they had been for many years. I had the fourth floor of that building.

Hicke In the courthouse?

Poole: In the courthouse. So you'd have demonstrations starting up without much advance warning, and a crowd would quickly gather down at the intersection of Mission and Seventh Streets. That would block traffic on Mission, on Seventh, and sometimes all the way back up to Market Street. The people came there because this was about as close as they could get to Washington. Because we had an office there, they figured that I was the representative of the Department of Justice, which had a lot to do with all of these things and were represented out here by me.

Hicke: So you were the target, not the court?

Poole: Yes, but they weren't hostile. They wanted me to hear their grievances, and I could hear them, and they carried that on. Some of the judges, by the way, on this court were very much upset by this. They had never had this sort of experience before and they were really upset. A lot of things were done during that general period of time, speaking of 1961 up to about 1962 or '63. In 1964, of course, we moved from Seventh and Mission to the Federal Building.

Protests of Nuclear Testing on Bimini Atoll

Poole: At the same time this was happening in the South, there also was a focusing on the United States' avowed intention to do nuclear testing out in the atolls of the Pacific. So this gave people who weren't otherwise enlisted in protest something else to go about doing. The atoll that was involved was Bimini. They would come and march in the street. At the same time, some of them were building a boat--a trimaran. A trimaran is a boat that has a hull, and then you have on both sides of it what looked like the hull of a boat itself, but it was two structures to balance on the waves. They were building this thing and were going to take it out there and themselves get into the target zone, and this scared the heck out of people back in Washington, because while they hoped that they wouldn't even make it that far out, they didn't know.

So, I got a call from Nicholas Katzenbach, who was at that time the deputy attorney general. He said, "We want you to go into federal district court and get an injunction against them proceeding out to the atoll." I argued with him that that would really serve to give shape and dignity to what they were doing and it wouldn't stop it. I thought if we just kept quiet on that, it would die of its own, because with that little, flimsy boat that they had, they weren't going to make it out that far. And he

said, "that's precisely the problem we have. If they go out there and disappear, they'll become heroes."

Hicke: Martyrs.

Poole: Martyrs, that's right. And he said, "We don't want that to happen, so we want you to go and get an injunction." So I went to Judge [William C.] Sweigert, District Judge Sweigert, and presented the case to him. He issued an order demanding that they cease doing it and so forth until he had time for a hearing. The papers were served upon them, and then they said they were going anyhow. But they hadn't gone anywhere.

Early one morning, I got a call saying that they had gone out and they were headed out west.

Hicke: Was this an organized group? Greenpeace or--

Poole: No, but these were people who became Greenpeace, and there were some of them also who belonged to ACLU, or so they claimed anyhow. This wasn't an official ACLU project. The ACLU was on record as being against the experiments out there because of the pollution of the peaceful, lovely area out there. That was the argument they made. So they were gone, they said.

I said, "When did they leave?" They said, "They left about three hours ago." We had prepared for a contingency. The Coast Guard was standing by. If I gave them a call, they were going to come to Fort Point, and we would do whatever we thought it was appropriate to do. The United States marshal and a couple of his deputies and I and one of my assistants went there. The plane gave us an aerial message of where they were. They were out near the Farallon Islands. I got on the boat and we went out to where they were. They put out a little dinghy from the Coast Guard cutter, and there were a couple of marshals on it. The marshals went over there and read them the order and placed them under arrest [laughter] and eventually brought them back to the boat. I was in back and was getting really queasy in the stomach. They brought the big boat in, which was a 300-ton boat, or 3,000, I don't know. It was a big boat.

Hicke: Coast Guard?

Poole: Yes, the Coast Guard. It was sort of like on dry land almost on that boat. So they brought them back in, and they were a little sick themselves by that time. The marshals put them under arrest and they took them down to custody. They asked me what about bail for them, and I said, "Why don't you say something reasonable-- \$100 bail for each of them?" They did, because there was going to

be a hearing. They had a hearing and the court scolded them for disobeying the court's order. They seemed to be fairly contrite, and we put a libel on the boat; a libel is a claim in admiralty, so that the boat that has been engaged in unfair or illegal conduct is therefore subject to forfeiture to the United States government.

So there they were, and the hearing was being set. We went to the hearing. Judge Sweigert was somewhat sympathetic with their cause, but he said they were doing the wrong thing about it. I think what he did was--there may be a couple of them that he ordered in jail for a couple of days. But mostly, he was pretty easy on them and let them go with the instruction that they agreed not to do it. They were ordered not to do it, and if they did it again, there was going to be some punishment.

A delegation of them came to me in my office to ask if I would lift the restraint of the libel from their boat. They said they owed the boat maker a large sum of money, but the boat was worth a little bit more than that. If they could get the boat, they would let the maker of the boat--it was the Capps Boat Harbor people that made the boat; I don't know whether they're still there or not now, but they were around Sausalito, around that way.

So, old soft-hearted me, I took them at their word and said, "I'll probably have to fight this out with the Department of Justice, let them take your word for it." They left. The Department of Justice didn't really want the boat. They said there was no particular judgment about it, but you know, "Their people probably can't be trusted not to try it again." I said, "I don't think they will." Well, came a Saturday morning, I got a phone call from one of the assistants who said, "They've gone again. What they did was they had a meeting, and the people who had given the commitments to you urged them not to do it because they had given their word on it. They voted them out. This is the dissident group that went down and took over the boat, and they've gone again."

I'm a little bit ahead of my story. I wasn't in San Francisco then. I had gone to Seattle to the World's Fair. My wife and I and two kids had gone to Vancouver Island and then over to Vancouver, and from there we had driven down to Crater Lake, which was one of the most marvelous things I've ever seen.

Hicke: Yes, in Oregon.

Poole: In Oregon. Then we went from there to a lake in California. On a Saturday morning, a ranger came to the cabin where we were and said I had a call--there was no phone in the cabin--that I had a

call down at the ranger headquarters, would I come with him. So I went down there, and one of my assistants was on the phone again, and he told me they voted these people out and they've gone out.

I said, "Where are they now?" He said, "They have been located about fifty miles out. They don't have the right maps, and some of them are seasick. What shall we do?" I said, "Tell the Coast Guard to go out and order them back and shadow them back in. Leave them on the boat." He said, "Well, a couple of them are seasick." I said, "Leave them especially on the boat [laughter] and bring them back in. When you get back to Fort Point, put them under arrest and let them make bail like everybody else." So that's what they did, but it was long and slow getting back in.

The judge was outraged that they had disobeyed his order. He put some of them in jail. The most may have been thirty days, I'm not sure. We filed the libel, we pressed the libel. The boat was sold. We prorated the charges between the maker of the boat and somebody else who had in interest in it. I've forgotten what it was. I think that pretty much exhausted what the boat had brought in. Not everybody wanted a trimaran. That ended that. There was some marching through the street, and some signs about the government taking their boat, an act of vandalism, and that sort of stuff.

More Social Discontent: Vietnam War Protests, Black Panthers

Poole: Well, that was the kind of thing that happened for many different causes and at many different times. All the while, there was something that began to emerge and that was a kind of unification of spirit against Vietnam. One day, I went somewhere and made a speech and I said, "When I first took this office a couple of years ago, there were a lot of people who were enlisted in expressing concern with the deprivation of civil rights. You don't hear so much of them these days. Some of the same people are involved, but now they're more truculent and they no longer simply parade bearing messages. Now they act out much of this. They express these things by storming the doors if they can, sometimes doing some damage to vehicles." What was happening was that the draft was beginning to pick up people, so they had some real cause, because the country just wasn't prepared for what Vietnam quickly became. So they would come to the vicinity of where we were and they would demonstrate.

At the same time we had the Black Panthers who were beginning to become a force.

Hicke: Let me interrupt this with just one question. What year? It sounds like you're saying that there was all of this social discontent about various things that eventually kind of merged into the protest against Vietnam, that they focused on that.

Poole: Well, many of the same people, but some of them adopted the protest against Vietnam but did not submerge themselves into it, because they were much more physical than the Vietnam demonstrators were at first. There were a lot of college kids who were involved in protests, because it takes a good while for the draft boards to get these registration names--a lot of people didn't register at all--and to begin to process them as cases, though they hadn't ever seen their faces. Some of the people did not report for examination as they were required to, and some were further down the line, and they were required to report. From top to bottom, there was agitation. About that time--I'm going gradually. I've gone from actually where the civil rights cases were shortly after I came into the office. Vietnam was there all right, and, in fact, the United States had people over there in Vietnam already.

Long afterwards when I got into private practice, one of my clients was a doctor who had been the chief medical officer of the Sixth Army at the Presidio. It was from here that a lot of people went out to Vietnam. He told me that he had been in Vietnam from 1961 to about 1963. He had also been in Korea. He was a regular in the army. He had been to Korea, and he had been with the United States forces when they went up to the river--that was the border between North Korea and South Korea--and there was a question then whether the Chinese would enter that war. They didn't believe that they would. So they went up to this reservoir, and it was in the winter, and the Chinese struck. This doctor was in charge of the people that were wounded. They were being assailed on all sides, and they began this great retreat from the reservoir going back south. A lot of people died in that.

I said to him, "When did you get to Vietnam?" It was in 1961, this would have been 1963, when President Kennedy was assassinated, then Johnson became the president, November 22, 1963. For reasons that had nothing to do with Johnson, and that's what a lot of people didn't understand, the war escalated. It escalated because what had started with Eisenhower really and the Kennedy people tried to hold it down, but it was beyond anybody's control. They weren't talking too much about it. You would hear a lot about small forays, but nothing that amounted to wholesale

bloodletting campaigns. But the people knew about it, and particularly the young people and there was this terrible feeling.

The Korean War lasted until 1954. Here we are about nine years later, and it seems like it's going on and on again. There was a great sense of futility, of what are we doing there, what is our objective, because it was something more than just debates that were involved. At the end of the road was the fact that many of these people would be picked up and would have to go to training and then to war. The college kids realized what this meant to them, particularly ones from Stanford down there. There was a faculty member who was also a minister. I've forgotten how that happens, but I guess Stanford has them. Anyhow, he was one of the great leaders. They would come up to the Federal Building, come all the way from Palo Alto up to the Federal Building to have demonstrations, and there was always an element that came with them that were bent on mischief. So you had some funny things. You had demonstrations in which you had people who were bearing banners about Vietnam, and you'd have maybe two or three banners over here about let's forget that, let's get civil rights to everybody in this country. And then you'd have the Black Panthers.. [Laughter]

Hicke: All in one big crowd?

Poole: Oh, sure.

Hicke: At the same time?

Poole: You see, it depends upon whose idea that particular rally was. They all had their time. The ones they had with the Black Panthers, shut off Golden Gate Avenue completely. The Panthers were very orderly. They made provocative speeches, but they were very orderly. They didn't throw paint on anything. They didn't do any kind of that stuff. There were a bunch of people there who weren't satisfied with that, and so sometimes they would want to just raise hell, and the Panthers were about to attack them.

On the steps of the Federal Building you would have the Secret Service people, you would have the United States marshals, you would have the FBI people, hoping I would say, "Go get them, boys." And I would say, "You don't do that. As long as they are peaceful, they have a right to do it. You cannot stop them. Let the police worry about traffic down there, but you can't do it." That didn't endear me to a lot of the men. They thought I was perhaps a brother Black Panther under the skin.

Hicke: It sounds to me like you had all the ingredients for an enormous problem.

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Poole: Each of these groups had basically some recognized principle that they espoused. But people who go around espousing principle --either you have to dress it up or something, or accept its being borrowed by the folks who will do something more than just talk about it. So you always had that question. There never was, that I can remember, any situation where, for example, the Black Panthers exhibited any violence at all at the Federal Building, in that area. While there would be these things up at the Federal Building, two blocks down the street--down Golden Gate Avenue--in the Tower Building that Hastings has--there was an old hotel, remember. Well, in that hotel, in there on the third floor I think it was, was the San Francisco Draft Board, [laughs] and these people would come down and shut off--I think that's Leavenworth Street--they would shut off Leavenworth Street and McAllister Street. They would go up and they'd roll over on the lawn at the library. And you couldn't tell where one began and the other the other did.

In between these things you'd have people who would come in and demand an audience with me. But I just put in a rule that I wasn't going to permit them to jam those halls with anybody, and I told them that. I said, "If you want to come and talk to me, I can probably handle pretty well twenty or twenty-five people, but no more." So they came in on one occasion--I had a leather couch about like this--and two women who were wearing high-heeled shoes --[demonstrates]

Hicke: Spikes.

Poole: --stood on that damn thing. I said, "You will get off that couch, and if you don't get off, I'm going to have every one of you put out." And they were saying, "You can't put us out." I said, "Don't bet on it, and get the hell off of that furniture. I know you may do it at home, but you're not going to do it here." They kind of reluctantly got down, and then by that time the marshals began coming in. I said, "The meeting is over, so goodbye. The marshals will help you out." Some of them didn't want to go, and the marshals pulled them. This went on quite a bit.

Hicke: Did you ever feel you were in personal danger?

Poole: I don't really think so. The only time I can say I was in personal danger was when the "no draft" people, the kids, who were over in Berkeley, came down along I think it was the Oakland-Berkeley [border] line. Is that College Avenue that comes past there?

Hicke: I think College Avenue goes from Oakland all the way through to Berkeley.

Poole: Yes, I think it was right there. There was this big demonstration that was going to start there in Berkeley and come down into Oakland. Well, at this time we were notified that the Hell's Angels people had said they'd be damned if they'd let them do that. The Hell's Angels people were very patriotic. [Laughs] So, [James] Jim Brosnahan, the guy who was back in Washington, the special counsel when they had [Caspar] Cap Weinberger--they finally threw it out--but Jim Brosnahan was one of my assistants, so we heard about this thing, so we went over there. The police had put a separation zone in, and the Hell's Angels people were there revving their engines up, but they weren't doing anything. Finally, the college kids--I call them the college kids, I don't know how many were in college--but whoever they were, they couldn't stand the standoff. The police didn't want them to cross the line. The police said, "You just stay here and do your demonstrating and it will be okay." Well, they broke and started across the line, and that's when the Hell's Angels moved forward on their bikes. Jim and I were standing there looking at these guys, and Jim said, "Let me get my identification out of here." I said, "To hell with your identification, let's get the hell out."

Hicke: Get ourselves out of here.

Poole: We did, too. And there was some minor fighting on that, but it's a wonder that more actual destruction didn't occur. Actually, the country was never wounded by the fact of these demonstrations, because it was a symbol of the violent unrest that pervaded the country at the time. To some extent, it was some outlet.

Draft Board Cases

Hicke: Tell me more about the draft board cases.

Poole: There were people who simply weren't about to go to war, and some of them went to Canada, some of them got lost in anonymity, and a whole lot of them just refused to report to induction or for a physical examination, or do any of those things. So the result was that my office had the biggest caseload of Selective Service violations in the entire country. There were loudmouths in Congress and elsewhere who expected that my office would be getting injunctions against everybody to make them stop that. And they expected vigorous prosecution of the Selective Service violators.

The problem we had there was this: a person who violated the Selective Service law did so by failing to register, by giving a false address, for example, by failing to take the physical examination, by not reporting when ordered by the [draft] board, and so forth. What they would do then is the board then would certify this case with all of its documentation to my office. Cases like that are taken on the administrative record. The Draft Board people were not professionals, so they often submitted to us records that were obviously incomplete. For example, one of them would have some very simple mistake. John Smith was registered. He registered on time. Then he got a notice to appear for a physical examination. One was sent to his place--the number they had before--and he did not come for the physical examination. After a certain requisite period of time had passed and he hadn't shown up, they called him a delinquent. They would send the thing to us. But how the hell did they know where he lived then?

Hicke: They didn't even know if he received it?

Poole: There was no record. We don't know that he received this thing. We were losing a lot of the cases. What I did was I set up in the office a special team, and we processed these cases when they came in, and if we found there was an irregularity in it or something was lacking, we would send it back to the Draft Board. That meant a whole lot of cases went back to the Draft Board. They complained to the state director of Selective Service. The state director of Selective Service complained to General Hershey back in Washington, and probably also to some Congress people, senators, and the senators would demand that the Department of Justice look into what the hell was happening out in San Francisco. What was happening was absolutely as clear as it could be. But that's how I got set back by George Murphy, Senator Murphy. One of the things he said was I was soft on prosecuting draft people.

Hicke: It's really an administrative mistake more than anything.

Poole: General Hershey, who was in charge of Selective Service, contacted me one day and asked me if I would come to Washington and talk with him, so I did. I went to Washington and I explained to him exactly what we did and why we were doing it. I said, "There isn't any middle ground. If the record isn't good, General, and jeopardy attaches, it's all over. "Now, what we do is we look at the record first, and if the record isn't good in our judgment, we send it back to them, and we tell them what we're sending it back for. But if we don't do it that way, it's gone." "Well," he said, "but a lot of people don't understand that, and it doesn't sell well," or something like that.

I remember he had a great big limousine and a driver, and the driver met me at the airport and drove me to his office. That was the only pleasant thing we had on that trip. [Laughter] I went to the Department of Justice and told them about it. They agreed. They tried to explain it. But George Murphy didn't have enough brains to understand anyhow, so it was easy to take on Ramsey Clark as being soft, and me as the one who executed these evil deeds. We were in a time of flux.

If you want to know where there was articulated sympathy, it was on behalf of these people who were refusing to report to Selective Service. There was a committee of lawyers, about a hundred in number, and they were committed to representing Selective Service violators. We hadn't even really gotten the public defender system in the federal courts at that time.

Hicke: They were doing this pro bono?

Poole: They were doing this pro bono, and this is one of the things that when [Ronald] Reagan became the governor, following Pat Brown-- this would have been in the latter part of the sixties; let me see, Pat was '58 to '64 to '68, yes, Reagan became governor in 1968 and was there for eight years--his state director of Selective Service was a guy that we all swore had a head of solid metal. He had been in the Korean War. He had been decorated for the Korean War, and we kept saying, anyhow, that he had a load of metal in his head where his brains were supposed to be.

Hicke: Do you want to say who this was?

Poole: I don't remember his name. He was the director of Selective Service. He called one day and he said he was really unhappy. He said, "How could we permit these lawyers to get together and conspire to defeat the workings of the Selective Service?" This sounds almost medieval. Then he said, "And they've got this man" --the coordinator of the lawyers was Aubrey Grossman. Aubrey Grossman had, in earlier days, been--I've forgotten what his real title was. I think he was secretary of a certain division, a certain part of the Communist Party in the United States. He was a lawyer. And he was the coordinator. So the director of Selective Service wanted to know from me how could we permit Aubrey Grossman to be the coordinator. I said, "Look, Mr. Director, that's not my side. It has nothing to do with the defense. I'm the prosecutor." [Laughter] He didn't think it was very funny that I was laughing at him. That is when I got the call to come back and talk to General Hershey, and I did.

Hicke: Which was probably a good thing because you had a chance to explain it all to him.

Poole: I didn't know at the time that he had talked to Hershey. But I found out later on that's what it was.

Hicke: Was he responsive to your explanation, General Hershey? Did he understand what the problem was?

Poole: General Hershey was interested in counter propaganda, and he wasn't interested in some explanation of why we couldn't do anything about it. The director of the California Selective Service got Senator George Murphy interested in it, and he made speeches on the floor in the Senate. Ramsey Clark was the attorney general, and I was Ramsey's henchman. That's the way it came out. I said to the director of Selective Service, "Look, I tell you what, if you feel this way, why don't you come down to San Francisco and tell the judges how you feel, because they're the ones who have to make these decisions, and why don't you do that?" Well, he was no fool. He said that he wasn't going to go down there and tell the judges what to do. I said, "Neither am I."

Hicke: And actually wasn't that one of the reasons that a lot of these cases came to this area--because people thought they would get a sympathetic hearing?

Poole: Absolutely. People came here to do their violation. They came here. As I say, you can't believe the caseload we had, and it was sapping my strength. I didn't have enough people to handle it. These were pretty hectic times.

Hicke: Was the Free Speech Movement part of this?

Poole: No. The Free Speech Movement had happened earlier at Berkeley, my recollection is. It was one of the first of those things that really got a lot of publicity and had a lot of life to it, because it resisted. But my recollection is that this happened, in fact, when I was in the governor's office. My recollection is that this would have been about 1960.

Hicke: Yes, and the draft cases came more in the late sixties. Is that right?

Poole: We recognized them by about 1964 or '65. What it did was a lot of the people who had been spending a lot of energy on civil rights just sort of forgot all about that. They were thinking about their hides now, about the country's hide, whichever it was you wanted. It was a subject of comment that nobody was much concerned. Yet the need to do something about the schools and accommodations and such was something that had always been. It was in that period of time that Thurgood Marshall was, for the NAACP,

trying a lot of cases against the people who worked for him. In about 1952 or '53 he went to Korea and he came back and here in San Francisco there was a meeting which was addressed to the problems of the black soldier in Korea. I have a picture somewhere in the office here. You wouldn't recognize Marshall. He's tall and he's skinny. He's not quite skinny, but he was a handsome, very tall guy. He was bold as he could be, and he was a very good lawyer. I had known him a long time because my wife had worked with him. At one time, just about the time I was going to the service, she was in the national office of the NAACP. She was the information director, and Thurgood was the special counsel to the NAACP. So they worked together on a whole lot of the cases. I got to know him pretty well from those times.

Charlotte Poole

Hicke: Since you've mentioned that, can you tell me just a little bit about what your wife had been doing all these years? I know she was not idle.

Poole: No.

Hicke: She was raising children, but I think did some other work.

Poole: Charlotte was one of the people who founded an organization called Jack & Jill. It was an organization whose purpose it was to help preserve the family home, the family unity, and to help guide children--families and their children--to imbue them with a sense of pride in themselves, and to understand and respect themselves, their parents, their teachers, their country, and that sort of thing. There were a lot of people involved in it. There were some chapters in a number of different cities.

Hicke: When would this have been?

Poole: I would say it started around the early fifties. Charlotte was a graduate of the School of Journalism of the University of Minnesota. She came to Pittsburgh on her first job. That is where I met her. She also was very active in another organization whose mission was to make sure that black kids stayed in school and that their parents took an interest in having them stay in school. She worked on that for years and years. By the way, recently the San Francisco Foundation set up a fund in her name.

Hicke: To carry on this kind of work? Is that what it does?

Poole: The fund is to continue carrying on that kind of work, yes. She wrote a good many pieces for magazines and publications. She was a very articulate person. She got her first job with a newspaper in Pittsburgh, which was my home, and that's where I met her. Then she edited a magazine in Philadelphia. The magazine was having a hard time, so she resigned and took the position that was offered to her as the director of information with the national office of the NAACP, and at that time Thurgood Marshall was the special counsel to the organization, and so they worked together quite a bit in those days.

Then I came to Washington to the National Labor Relations Board, and she applied for a job down there, but it didn't come through while I was still there. But she moved down to Washington anyhow and worked for, I guess it's called the OMB I think it was, the Office of Management and Budget. Then she was assigned to work with the director of Office of Price Administration. It's ironic. Several years later when I came to California, I got a job in the West Coast Regional Office of that same organization. It was headed first by Chester Bowles, who was a very famous advertising man in California, and then by Paul Porter. When I got to California, it was Porter who was the national director and Ben Duniway, who was a judge on this court and was the regional director out here, who gave me my first job.

Hicke: That's right. You had told me about that.

Thurgood Marshall

Poole: Now, where were we on this other thing?

Hicke: We'd started to talk a little about Thurgood Marshall. Is this a good time to talk about him? Do you have any anecdotes?

Poole: Well, I guess I've forgotten most of them.

Hicke: Okay. Include them if they come back to you as we're going along.

Poole: Over the years I would see Thurgood. I first saw him when I was in high school in Pittsburgh. It was when I was in college and I was home for the summer recess.

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Poole: My mother had been very active in the NAACP and was acquainted with a number of the heads of that organization, and I used to go

often with her to meetings, although I didn't know what the meetings were really about. As time went on, I became a sophisticated high schooler. I began to know who they were, and his name was very familiar. I was a kid, but I met him, and he was not famous at all. He was just a young lawyer out of law school. But then he went to the NAACP, and he started doing things down in the South that brought him into many peoples' knowledge. When I first came to California, he would often come to places like Los Angeles and San Francisco, and there would be meetings. I'll see if I've got a picture around here taken at one of those meetings. I'll dig it up for the next time. You wouldn't recognize him. He didn't have the heft that he ended up with.

He was always very friendly with us. I remember I came to Washington. I knew him, obviously; he was the solicitor general, put in that position by President [Lyndon B.] Johnson.

Hicke: Mid-sixties?

Poole: Yes. He had been appointed to the Second Circuit, and I think he was appointed to the Second Circuit by Lyndon Johnson, or was it Jack Kennedy? I can't remember now. I can tell you though.

Hicke: Wait a minute--you have the lapel mike attached.

Poole: I'm not going anywhere. It's in here. [Goes through papers.] Let's see. He was appointed in 1967, I believe it was. That would have been by--

Hicke: Johnson.

Poole: Lyndon Johnson. Now he was appointed first by John Kennedy as solicitor, and then Johnson had him leave the court--leave the Second Circuit--to become the solicitor general, and then he appointed him to the Supreme Court. After he was appointed to the Supreme Court, I didn't see as much of Thurgood as I had previously. If we were in Washington or he was out here, we'd see him. He had been to our house. But obviously he had more things that he had to do and less time for friends. But he was always very friendly with Charlotte. What we would do is we would be in Washington, and we'd check through his secretary to see if he could have dinner some night. It was sometimes yes, sometimes no. I last saw him when the ABA [American Bar Association] had its convention in San Francisco, and I spoke to him a couple of times during that meeting. The last time was, I think, his last day here. I told his wife, CiCi, that I expected to be in Washington in October or November, and I would call him to see if he was free to have dinner. She said, "Call me and I'll be able to tell you."

I said, "Okay, I'll do that." I never saw him alive again. I didn't go to Washington, and I didn't see him.

He was quite an active person and someone who immensely enjoyed what he was doing. He was very successful. He had a lot of people help him. He had good people around him. He had Jack Greenberg, who followed him as the counsel for the Legal Defense Fund, and just a lot of other lawyers who were glad to work with him. He was the striking force of that movement, and every time he had some victory, he got more confidence in himself.

Hicke: Can you tell me a little bit about why he was so effective? He was charming, or persuasive, or what?

Poole: I'll tell you what; he's from Maryland, and he applied to the University of Maryland Law School and they turned him down. So he went to Howard Law School in Washington, D.C., and he promptly sued the University of Maryland [laughter] and beat them down. He did; they cried, "Uncle! Uncle! Uncle!" Of course, in connection with things such as the integration of schools in the South, and Orvel Faubus and the governor of Alabama--

Hicke: [George] Wallace?

Poole: Yes, Wallace. They were used to having judges and lawyers back off from them. He didn't back off. Of course, he demonstrated that the federal courts were the right forum in which to fight these battles, because federal judges were more independent. Not all of them were sympathetic and he lost some. But he was a tough man in court, and they really prepared their cases when they went in.

I had dinner with him one time, and we were sitting there talking, and all of a sudden he looked at his watch and jumped up and said, "You know what, I forgot. I told you this case was going to be two days away. I've got an office full of people waiting for me. I've got to get out of here or else I won't be able to eat nothin'." [Laughter] So he left. I've forgotten what the case was now. He traveled all over the country. Incidentally, my brother-in-law, who was not a lawyer--

Hicke: What was his name?

Poole: John Morsell. John Morsell was the assistant secretary of the NAACP. He was really the point man for a lot of those things. He and Marshall were very friendly--very good friends. Well, back to something.

More on the Draft Cases and Black Panthers

Hicke: Okay, so back to your stint as U.S. attorney. We talked about the draft cases. Do you think you've finished that?

Poole: We went through this long cycle with the demonstrations and with the college professors running up-- I said to one of them one day, "If you really wanted to show how much you're with them, why don't you volunteer?" He looked at me as if I weren't standing there. He said, "Will you go with me?" I said, "I'll tell you what, if you'll volunteer, I'll go with you."

Hicke: You felt you were pretty safe in saying that?

Poole: I was pretty safe in that, yes. We also had--I haven't talked to you about the Black Panthers.

Hicke: That's right. I wanted to ask you about that.

Poole: They constituted an organization whose rhetoric was more than I could deal with, but I maintained a speaking relationship with a number of the top people. I think they got to the place where they really believed that while I had my own reservations about their movement, I was not going to go off half-cocked on anything. As a matter of fact, the last thing that happened with the Panthers, as I remember, as far as I was concerned, was when Charlotte's father died in St. Paul. He was a surgeon in St. Paul. She and I had just come back from the Caribbean. We'd been home maybe two days and her father died of a heart attack. He had survived cancer that had cost him the loss of an eye and so he could no longer do surgery. But he was still at his medical office every day. It came as a great surprise to us, but he died and so we went to St. Paul.

I think it was the day after the funeral there was a rally out in Golden Gate Park here. One of the Panthers got up and said, "To hell with that guy [Richard] Nixon. We'll kill that son of a bitch." That was rhetoric, but it was a great mistake. One of my assistants called me and told me what had been said. I said, "Are you quoting what he said, or what the newspaper said he said?" He said, "KQED has a tape of it." I said, "Borrow the tape if you can, or subpoena it if you have to, and we'll see what it was."

The studio didn't want to turn it over to us. They thought there was some principle involved in not doing it. I said, "In that respect, you're like everybody else. You have a tape. It's part of your business to make tapes. I'm not asking you to do anything with it, except we want a copy of it. We'll take it one

way or the other." They said they would bring it to the grand jury. I said, "Why don't you just make a copy of it?" I've forgotten what their reasoning was now. It made some difference whether they brought it to the grand jury or whether they gave it to me and I brought it. I didn't care one way or the other, as long as I got the tape.

They did come with the tape and we played that for the grand jury. The tape wasn't quite as articulate as I would like for it to have been, but there it was. I talked to the Department of Justice about it. I said, "This is some extant expletives that we have from this guy. It is not to be taken seriously, if you ask me. This is Nixon we're talking about. This man is the president of the United States, and I realize that you can't just pass it off like he's talking about some casual bystander. But the reason I wanted the tape was so we would know exactly what he said, and that's exactly what we'll do." They said, "We've decided back here that we're going to handle this." I said, "Okay." The attorney general can always handle any case he wants to handle. They're all his.

They sent out a special team--Mutt and Jeff. One was kind of short and the other was kind of tall. They said they were going to make a Smith Act case out of this. This was supposed to be only a part of the subject of their investigation. The Smith Act has to do with subversives, and it was very controversial. It always had been. In all the years I had been in the office, I had never had anybody suggest that I do a Smith Act prosecution. It had been done a great deal in the McCarthy years, in the fifties. See, Nixon was president, you understand. I was the holdover in the U.S. Attorney's Office. They had all kinds of antics. They were going to bring in witnesses from--I'll tell you what they were doing.

If you remember, Hubert Humphrey ran for president in 1968. The Democratic National Convention was in Chicago that year, and there was a mob scene. Among others who came to Chicago, just for the purpose of raising hell, were members of the Black Panthers. They all sort of converged upon the place of assembly, and remember, they disrupted it pretty much. Among them were the Chicago Seven that they talked about. Abbey Rosenberg, I think, was one of them, and some of the Black Panthers. In his early months, Nixon had induced the Congress to pass what is called the Travel Act. The Travel Act made it an offense for persons to travel in interstate commerce for the purpose of doing violence.

Hicke: To travel across state lines....

Poole: That's what they mean by interstate commerce. This was very much like the Smith Act, because if a guy crossed the state line you could always question the purpose. I suppose it was true of the Panthers and those guys. In any event, they were going to bring people in from Chicago and other places to prove that the Black Panthers were a subversive organization. So they brought what was called a Smith Act indictment and that included the Travel Act.

They had some real strange things they wanted to do. They wanted to bring people up to the grand jury who were completely masked, so that the grand jurors would not see who they were, would not know who they were, except for what they said, but their identities were to be concealed. I said, "I've been around a lot of grand juries, I've returned lots of indictments, but I've never known of any suggestion that the grand jury is to be trusted to return an indictment but not permitted to see who the witnesses are. If you don't trust the grand jury, don't bring it, or send it to some state where they'll do it. But as far as I'm concerned, you're not going to send somebody up here with masked faces or behind a screen for the grand jury."

Hicke: Who were they thinking of sending? Can you explain why they wanted to do this?

Poole: People who they wanted to protect their anonymity, and they were afraid that the grand jury might leak the names out or something like that. That's the only thing I can say about it. I said to them, "I wash my hands of this. I'll have no part of this. The attorney general has the authority to litigate as he sees fit, but he doesn't have the authority to litigate through me. I won't sign an indictment, and I will not participate in the grand jury." They said, "Okay." So they sent their own people out, and I didn't sign the indictment. It was signed by [Richard] Kleindienst and I've forgotten who else now. Incidentally, that indictment came to a bad end. Charlie Gary defended the defendants in that case. Did you ever know about Charlie Gary?

Hicke: No.

Poole: Charlie Gary--actually his name would have been Charlie Garibedian--was Armenian, and he came from down in the Fresno area originally, where the Armenians were not well regarded and were often the victims of discrimination. He was a mighty tough lawyer. I had tried cases against Charlie Gary when I was in the District Attorney's office. I beat him at every one I ever tried with him. But I'm the only lawyer in town that can ever say that, I think. [Laughter] But we were good friends. We became good friends on that account. I respected him. I'm talking about maybe four cases altogether. Charlie and I were friends. He

could trust me and he didn't lie to me, so it was a good relationship. I'd known him a long time. He represented the top people in the Black Panthers, and all kinds of things were said about him and them. But Charlie didn't confide in me what were secrets of his clients, so I didn't have any problem with them.

Incidentally, that indictment was returned before I resigned. I was still there. There was a blank place for the signature. An indictment of consequence would be signed either by the attorney general or the deputy attorney general. It would be signed by the assistant attorney general in charge of the division that brought it. It might be the Criminal Division, it might be the head of Security Division back there too, and it might be something else. And then there was a place for the United States Attorney to sign next, and that wasn't filled in. They didn't have any name typed underneath it, so nobody had to do it. About that time, I resigned, and I think my resignation was such that the indictment came sufficiently after my physical departure that it didn't seem unnatural that I didn't sign it. I never spoke to anybody about it. I saw a copy of it only because there was some question that was raised about it, and I had to see the indictment. It had been returned already. It was no longer secret. But I had to see the indictment in order to be able to answer the question, because it had to do with what was an irregularity in the returning of the indictment, and people assumed that I knew something about that, and I didn't. One of the judges thought I knew something about it, and he asked me about it, and he showed me the indictment. I explained to him that I hadn't signed the indictment. I pretty much knew what it was going to contain, but I hadn't seen the final product. I said, "But since you've shown it to me and you have a legitimate reason for showing it to me, I'm fine. I don't want to memorize it."

Anyhow, they returned the indictment. They had a motion to dismiss, and--something I didn't know at the time--they had, under the statute permitted wiretaps, which didn't exist when I was there; all of these things became effective in a kind of a crime package the Nixon people put in--anyhow, they had tapped a number of telephones, and they had gotten statements from various people that were incriminating.

Hicke: This is the telephones of the Black Panthers that they were tapping?

Poole: Yes. Gary demanded that the tapes be turned over to him. They didn't want to do it.

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Poole: The first attacks upon the indictments were that it didn't show on the face that the attorney general had specifically authorized these interceptions. That was probably in my last days in office. They made a motion, and the judge said, "Well, that's a pretty ministerial thing." But he said, "I suppose the one person we could ask would be Mr. Poole, and he could ask the attorney general if he is authorized, because there's some confusion about it." The people who had presented the indictment had gone back east, and I don't know why. They weren't available though. So they sent for me, and they told me what they wanted. I said, "I'll go down and call them."

And that was one of the few times I ever talked to John Mitchell. I told him that they wanted to know about this, and I said I didn't have much information on it, but they wanted to know if you authorized it. They have agreed, if I could come back and represent to the court that I talked with you and say whether you have authorized it. He said, "I certainly did." I said, "Thank you," and I went back and I reported that conversation to the court. The defense people accepted it.

There was nothing further. But I had never seen nor heard of the tape. A motion to dismiss before the trial came out of the office then, but I was in the court because I had some business there. I was in the courtroom. It was Judge [William] Gray, who is now dead. He was from Southern California, and he was a visiting judge at the time. Judge Gray was presiding. The statute provided that where there was a matter that related to domestic security, the attorney general could do it this way. He could authorize a wiretap. The first challenge was whether the wiretap had been authorized. That got by the book. The attorney general said he had, and they accepted that. Charlie Gary said, "Mr. Poole says that's what happened, that's what happened." And so I thanked him.

Later on, Gary brought a motion to dismiss, because he said that this could not be a matter that reasonably could be called involving the safety of the United States. They had a long argument about that, and the trial judge said, "Let me think about it overnight." He said he would come back the next morning. The next morning he came back. I was on my own time then, so I wasn't there. He came back and he ruled that this was a matter of domestic violence. It did not involve the security of the United States, and therefore they had to turn it over. My successor was a fellow named Jim Browning, no relation [to James Browning, former chief judge of the Court of Appeals, Ninth Circuit]. Jim said that he would have to consult with the Department of Justice, because he wasn't presently authorized to turn over copies of the tapes to the defense. The judge said, "I'm going to give you

until tomorrow morning." The next morning Jim came up and told Judge Gray that he consulted with his superiors, they adhered to their position that this was a threat to internal security of the United States, and they would not surrender the tapes. He said, "This case is dismissed." [Laughs] It was, and the Department of Justice elected not to appeal. So they spent all of these hours and days--all the energy, all that went to naught.

Risk-taking

Hicke: We have lots more to cover, but I think I'd just like to ask you one more question for today. It seems to me that in lots of things that you've told me about, you have taken a risk, not only taken a risk, but you've not been afraid to take a risk.

Poole: Taken a risk?

Hicke: Where I think you take a risk is by telling the U.S. Attorney General that you're not going to sign this indictment. Isn't that a risk of some sort?

Poole: What kind of risk?

Hicke: Well just challenging--

Poole: You mean he would say you're fired?

Hicke: Well, something like that.

Poole: He could have said it, but actually the attorney general does not appoint the United States Attorney. He's appointed by the president. I've got two commissions just like that [points to certificate].

Hicke: Do you report to the attorney general?

Poole: He's the superior officer of the Department of Justice, of which the United States Attorney is a part. So, of course, yes.

Hicke: Okay, this one is signed John F. Kennedy, President.

Poole: That's one.

Hicke: Okay, Robert Kennedy--

Poole: And there here was the second one, see. That was 1961. Then this was [signed by] Lyndon Johnson. This was [Nicholas] Katzenbach for the attorney general. So the appointment is not by the attorney general. It's on his recommendation, obviously, but by the president. He wouldn't have had to have said it, he would have just gone and gotten the president's authorization. The United States Marshal is also appointed by the president. They asked for the marshal's resignation shortly after Nixon was elected.

The marshal, who had only been in office maybe three or four months at that time, came to see me and said, "They're asking for my commission, and I guess they'll probably ask for yours." I said, "Probably." And he said, "Why don't we get a lawyer and sue?" And I said, "What do you mean sue?" He said, "Well, we have a commission for four years." I said, "Yes, but we don't have a guarantee on that." He said, "I've talked to some lawyer who thinks there's a pretty good case." I said, "That's fine, you go ahead and do it." He said, "Don't you agree that we're not appointed by the attorney general, and he can't fire us?" I said, "You're technically right, he can't fire you, but keep in mind he knows pretty well somebody who can, and that's the president. I think it depends on how you want to go out."

He said, "What are you going to do?" I said, "They know I have talked to the deputy attorney general and I've told him"--that was Kleindienst--"Look, this is like on a field of combat, when you lose, you lose, you have to sign the Magna Carta, or do something like that. There's not going to be any trouble. I have not submitted my resignation, but anytime you want it, you can get it. There will be no problem. I give you my commitment on that. Likewise, when I decide what I'm going to do, I'll tell you about it. I wouldn't walk off leaving a grand jury sitting and waiting for me to come back from a recess. But you owe me nothing, and I would still owe you the responsibility of the office that I hold until I resign, but that's all. As long as we understand that, it's okay." Kleindienst said, "That's good enough." So I told the marshal when he talked to me, "They know they're not going to have any problem with me, as soon as they get somebody." As a matter of fact, what they told me was that the only pressure there was on my position was that Senator Murphy was adamant that they remove me. They didn't want to do it that way.

Hicke: So you really don't feel that you were taking a gigantic risk?

Poole: Maybe in the sense that he would say, Well we think we will take your resignation now. I knew Kleindienst early on, and I had been the United States Attorney for a year after Nixon was elected. There wasn't any secret it was going to happen, it just was a

matter of when. They weren't trying to rough me up. Our relations were pretty good for the most part, but I was even more independent during that time between Nixon's election and the time I finally left the office than I had been before, because I hadn't had to do it before. My sympathies were with the Kennedy and Johnson administrations--we were on the same team. I did know Kleindienst. I never disputed the authority, and they weren't bad with me.

I thought I was being sensible. These were antics that were going on. I always treated the grand jury process and the charging process and all that with respect. So that when they were talking about putting people there and putting something over their heads so you can't see them, I mean, what the hell, you don't trust the grand jury? I said, "I think I've heard of such cases, but I wouldn't want to be a grand juror if that's what you were doing. I certainly wouldn't, and certainly if you want to do it, fine, I'll have nothing to do with it." You see, I didn't have to be in the grand jury room as a U.S. Attorney. My assistants were there more than I was by a long shot. I had no trepidation. By that time, also, I had been advised of my impending appointment as a Regent's Professor of Law.

Hicke: Okay. I don't want to get too far ahead of the story. We've got to the end of your U.S. Attorneyship before we get even to the middle. But I think it's a good place to stop for today.

Poole: Okay.

Assassination of John F. Kennedy

[Interview 6: July 9, 1993]

Hicke: Let's start today with the assassination of John F. Kennedy, and I think that was 1963, and you just reminded me it was November.

Poole: Yes, November 22nd. On the day that he was assassinated, I had gone to Sacramento with one of my assistants to appear in a case which had some delicate aspects to it, because it was a case in which a young man, probably about nineteen years old, had committed a robbery, and there was some question about his mental condition. My particular interest in that case--it was a case in my Sacramento office--my interest was because I thought that the trial judge should recuse himself for the reason that he was a long-time and close friend of the young man's family. The judge and I were also, and still are to this day, good friends, and it

was rather difficult to suggest that he recuse himself, and certainly none of my assistants stationed in Sacramento were quite in the position to do so. So I decided to go up there and talk to him.

I had decided before the 22nd of November to do that, and I had gone up there, and I had suggested that it was probably an appropriate case for him to step down from. He rejected that, and he said, "We have only two judges up here, and we're both filled up with cases, and if there is such a thing as the rule of necessity, this is it." I said, "I don't think that is applicable here." I called him by his first name, but I won't mention it to you now. I said, "I just think that this is a case that, in some way, you can't handle it. It should be heard by somebody designated, probably either from another district or perhaps you should ask the chief judge of the Ninth Circuit." He didn't want to do that either.

So, I said, "Well, I want to indicate for your record that I think this is an appropriate case for refusal, and if you refuse to do so, I have two alternatives. I could myself make application to the Ninth Circuit, but I don't really want to do that. I've known you a long time. You know exactly what I'm saying, and why I'm saying it. This case doesn't mean a whole lot to me. It may mean more to you on account of your friendship with the defendant's family. It doesn't mean that to me, and I regret having to say this to you, but I think it should come from you and not from me." Well, he said he was going to try it.

I came back to San Francisco and talked with some of my assistants, and went upstairs in this building--not this building; Seventh and Mission--and I talked to one of the district judges up there who was an old-timer, and he said to me, "Of course you can invoke any one of these remedial formulae that we have, but I'm not sure that it's going to accomplish very much. You don't seem like you want to have a real public fight." I said, "I don't." He said, "Then the best thing to do is make your objections on the record, then you'll know where you are. You'll have to do it in the presence of the defense counsel, of course." So I went back up there and did that, and the judge adhered to his position and we set a trial date, and that trial date was the 22nd of November. So I went back up there and we proceeded. I had made my point.

They put on a psychiatrist, and I had tried a lot of cases that involved psychiatrists, so I was not at all reluctant or intimidated. I used to snap them up sometimes. I was cross-examining this psychiatrist, and I noticed that one of my people--the branch office was at the Federal Building in Sacramento--and one of my staff people came into the courtroom and

caught my eye and held a piece of paper up. I looked at the judge, and I said, "Your Honor, I think my assistant is trying to tell me something. May I just go and get that paper?" He said, "Yes." So I went down and he gave it to me and it was--they had typed something that said, this is almost verbatim. It said, "It is just reported on that radio that President Kennedy was shot while riding in a parade in Dallas. His condition is not known, but blood was seen coming from his head."

I gave it to the judge and he read it and then he read it out loud, and he adjourned the case. We talked about it for a moment, and I went back to my office and tried to get some more information about it. The airwaves were filled with it. So I told the people in my office up there, "We have to do what we're supposed to do, but I think it's appropriate to close this office for the day. So please notify the agencies, the FBI, the Secret Service, and the United States Marshal that we're being closed today, but I'll designate one of you to be the deputy assistant on duty. You'll stay here until five o'clock, and thereafter, if anyone has to get you, you can give them your home phone. I'm going back to San Francisco." So I did.

I drove down the highway back to San Francisco, and I remember that as it got later in the afternoon, the comments were more serious and they finally said he was pronounced dead. I came back and I called them and said the same thing to them that I had said in Sacramento about somebody being on duty. There were several people still there, and we talked about it. There was just a flood of calls from the press and everywhere. Of course, we had no information, we couldn't tell them anything, we didn't know. So I went home. My children were asking me about it, and we couldn't answer them. I sat down in the family room with the television and the radio on and listened to it. Everywhere people were pretty much upset and crying and that sort of thing. It was just a horrible time, and there were all kinds of speculation.

I got lots of calls: the FBI wanted to know if I thought I needed any protection. I said, "No, I don't need any protection." They said, "You know, people do some funny things." I said, "I understand that, but, thank you, I don't think I need it." And I didn't. I can only say that it seemed to me, as it did to a lot of other people, that things had been shattered. You don't expect anybody to assassinate the president of the United States. I don't think so.

Hicke: You don't even think it's possible to be done, let alone that anybody would want to.

Poole: Yes. That's pretty much what I did for that weekend. They swore Lyndon Johnson in as president, and they flew back to Washington.

Hicke: What did that do to the wheels of government, for instance your particular office?

Poole: I called particularly the legal assistants, and we put somebody on duty and one clerical person at least to mind the telephones. I said, "I don't know that anything is going to happen and I'm not trying to constitute you as a fountain of knowledge, because you may not know any more, but just so that we are sure that if something comes in, we still have to do our job, whatever it is, I want somebody to be here. I want someone in this office from 8:30 until five o'clock. You can divide it up any way you want to, but I want somebody here, and I don't want those phones to ring and they can't find anybody. If I go anywhere, you'll know where I am. The first thing I will do, if I go anyplace, will be to let you have a phone number. I don't know of anything I can do. I'm helpless, as everybody else is. For whatever it amounts to, we are part of the Department of Justice, and what has happened to our president is not going to leave us in a state of paralysis. I don't think anything is going to happen that is going to call for any action by us, but I want to have the satisfaction of knowing that we are doing what we are supposed to do." So that's the way it was.

I didn't go to Washington to the funeral. In fact, I called the Department of Justice, and they said, "You can come if you like, but we think the more appropriate thing is that each of our offices is on duty, and if anything does happen, that we have a communication system that's there." So that's what I told my people.

It was very hard getting over that, very hard. I had met the president on several occasions, and I was just one of ninety-three United States attorneys, but I was absolutely shattered that this had happened to him, and it took me a long, long time to get over it, just a long time.

I listened to the dirge of the funeral music that the networks put on, and it was just a horrible, horrible time. I'll give my wife credit. She said, "You've been sitting around the house here for several days, and all you've been doing is torturing yourself, and I don't think you should do it. I don't think you should do it at all. You know, I'm the last one that would tell you to go down to your office and do something, but I don't think this is good for you." She was correct, and I went out and got in the car and went down. This was a Saturday afternoon. There was only one person who was there. The office was closed on Saturday.

He said, "What are you doing here?" I said, "What are you doing here?" We sat down and talked about it, and some of the agents knew that we were--at that time, we were still at Seventh and Mission--and they knew that I was in the office, so a couple of them called and a couple came over. I asked them if they'd heard anything more about-- Remember Jack Ruby killed this guy when they were taking him out of there. That was another shock. I just wondered what's happening to this country.

Transition to Johnson Administration

Poole: President Johnson took over, and when they had the services for President Kennedy, I watched that. Then they summoned the United States attorneys to come to Washington.

Hicke: All of them did you say?

Poole: Yes. I went back to Washington, and it was mostly an effort to restore confidence and to remind them that they had responsibilities which were going to be the same, that probably the best way they could express their feelings about the dead president would be to continue doing what they were supposed to do--take care of the responsibilities that they had, and let life go on. So we did.

Hicke: Did the change of administration make any difference?

Poole: Well, it didn't make any difference to me. I had only met President Johnson a few times when he was vice president, and when he was running I met him once or twice, but he came into that meeting that we had in Washington and sort of reassured us that we were going on, doing our work, and even though this had happened, we were still the ones that they were looking to to make sure the job was done. It was kind of nice for him to say those things. We had some conferences. I was there for about two days, I guess, and then came back. Gradually, it became clear to us that there was friction between the attorney general, Bobby Kennedy, and the president.

I knew the Kennedy press secretary, Pierre Salinger, and the assistant press secretary, Andy-- I haven't seen him for so long, I've forgotten his name. I've known the guy for years. He's from San Francisco. We got into November and December, and then we got into 1964. Bob Kennedy resigned and went to New York, where he had established residence, and, if you remember, he ran for the Senate and made it. There was some acrimony--I didn't know the

details of it--between him and Johnson. I guess it was natural. Let me put it this way: not all of the people who were in the office of the United States Attorney were fond of President Johnson. Some of them were pretty outspoken. My thought was, you know, you don't have to stay in this office, and he's now the president. If your mission was only to be in this kind of an office while President Kennedy was here, and he's now gone, then you should go too. You can't have it both ways. You can't be his representative out here in California and at the same time engage in public conduct that undermines. He had some meetings in which there was no one present except the U.S. attorneys. I mean there were no assistant attorneys general--we talked about that.

Hicke: Where, here in San Francisco, you mean?

Poole: Periodically, we'd be called to Washington, and we'd just kick everybody out of the room, and kind of lay it on, on a non-repeating basis. Most of the United States attorneys, whatever their private thoughts were, indicated that their intention was to remain with the office. Some of them were going to drop out, were not going to ask to be--see, it's a reappointment. Reappointment is for four years. Most of them were going to stay on the job. Some few resigned.

Hicke: Who was the new attorney general after Bobby Kennedy resigned?

Poole: After Bob Kennedy resigned, the next attorney general was Nicholas Katzenbach. In 1964, Lyndon Johnson ran against Barry Goldwater and really had a sweeping victory. As a consequence of that sweeping victory, he suddenly had a whole lot of new friends--guys who should have gone about their business in a lot of federal offices were wearing little boutonnières [laughs].

[tape interruption]

Poole: Where were we?

Hicke: Yes, that's what I was just trying to think. We had just actually pretty much finished with the change of administration, if you want to go on.

Poole: Johnson was--I never knew him well, but he was quite solicitous of the U.S. attorneys, and I went to the White House several times. I would get an invitation to come to the White House, and I did.

Blocked Appointment in 1968: Draft Violation Cases and Shootings##

Poole: In about 1967, we didn't have a Democratic senator in California, so we had the congressmen with that political patronage authority divulged upon them, and there were five or six congressmen from Northern California, and there were about 2,000 people who wanted to be appointed a United States district judge, and it got pretty much fractionated. Some of the machinations were not very noble. In any event, I had a couple of very strong friends who were congressmen. One of them was Philip Burton. But they represented a minority of the congressman.

As I said, there were about six congressmen and there was one who apparently did not take any real position, and three or four of them who were for a lawyer across the bay who had been, I guess he still was, a superior court judge. Brown had appointed him as a superior court judge, and he had his troubles with the bar, that is the lawyers, because they said he had the record for the highest number of refusal challenges made by anybody over there. In any event, they prevailed upon President Johnson to give his blessing to this guy's appointment, if he could qualify by the ABA [American Bar Association]. He didn't get through ABA. They rejected him, and that left me as a survivor. So the ABA gave me a recommendation as well qualified, and I went back to Washington, and they told me the president was going to make the announcement, and I went and had a picture taken with President Johnson, and the next day he made the announcement.

Hicke: This was '68 by this time, wasn't it?

Poole: This was in 1968, yes, and in '68 they were going to have another election. They had a Republican Senate, and we had a senator by the name of George Murphy, and Murphy gave as his reason [for blocking the appointment] the contention that I was soft on draft dodgers. As I mentioned before, he was really after Ramsey Clark, who had become the attorney general, and I was simply the henchman.

Hicke: What was his problem with Ramsey Clark?

Poole: Well, I don't know. We didn't have any policies that came from the attorney general about how to treat draft violations. The problem we had was that we had some judges who required strict compliance with the law before you convicted a person of a draft violation. And as I said, we had the technical problem that the process by which a person becomes in violation of the Selective Service law is (a) he doesn't register when he is required to; (b) if he registers, he doesn't give his full name or his right name; (c) if he is called up for registration, he doesn't come; or (d) he doesn't give his right address. Everybody at one time had to

do all this registering. So if they call him up to have a physical and he doesn't show up for his physical, or if he does show up for his physical and they call him up for induction and he doesn't come for induction--all of those are violations. All of these actions made up the record that the agency made that constituted the basis of the designation of a violator.

Draft Board members were not experts, they were citizens who did the work, so what they often did was they skipped a step or two in the process. For example, say the person didn't show up, but there would be no proof in their record that they had ever sent anything out, or if he didn't show up, claiming that he was ill or whatever it was, there was nothing in the record that he wasn't ill.

Hicke: So the paperwork didn't back up the statements?

Poole: That's right, and that's true of [what you find] when you review a lot of agency actions. So the agency record, which was the Draft Board of the Selective Service System, was very often defective. Well, you'd go on that and you make a charge on it, and you start the trial, jeopardy attaches, and, on the whole, you find that there is a hole in the thing. You can't try him again. He's been tried, so double jeopardy. So to stop that, I set up in my office what was the equivalent of a group, and their function was to examine the record when it came to us from the Selective Service and before we took it into court. As a result of that, we threw a number of them out, because they couldn't get through.

The members of the Draft Board would usually resent this as a kind of a slur or criticism of their competence, and they would make these reports to the state director of Selective Service, and they'd even make reports to General Hershey, who was the national head of Selective Service. And General Hershey would talk to his friends in the Senate and say, That's what Ramsey Clark and his people are doing out there in California. That was the story that they used.

Hicke: And you said they were trying to get at Mr. Clark through you.

Poole: Yes, that's right. Also, some of the local law enforcement people, the sheriff's office over in Alameda County particularly--they had a lot of parades and demonstrations and all that--and sometimes did some quite foolish things. Some of the things were unlawful. Once I was in Chicago someplace, and I got a call saying these guys in California threw a big log on a railroad track. The statutes say if you try to derail a train that's a death penalty case.

It's one of those things where you didn't get anybody who said I saw it. But they said, "All of these people are dancing around, they must have done it." I said, "Who did it?" They said they should be charged with attempted homicide. Remember--you may remember it, it's been a long time ago--the demonstrations on Telegraph Avenue? These kids protesting the draft and a lot of people who just wanted to get into some action were up there. They'd stop traffic on Telegraph Avenue. They'd do a whole lot of things, and they'd throw bricks at the cops and stones at them. The police got to the place where they were loading them up with those big buckshots in their guns, the sheriffs were, I mean.

They had a couple of situations in which people were shot seriously and several of them killed. In one case, there was the owner of an establishment on Telegraph Avenue--about a two-story building--and he had a little penthouse on the top of the two stories. When they announced they were going to have another demonstration there, he said to his employer, "I don't want anybody to get up on that roof, because if they get upon that, they'll throw stones down at the police. You go up there and keep it clear." To get to the top of this little shed on top of the second floor, there was a ladder in place. So he's climbing up there. Somebody had thrown something at somebody, and they shot him, and they killed him.

Hicke: The police shot him?

Poole: Yes. It was the deputy sheriffs. It was horrible. Here they just shoot him, and this guy wasn't doing anything to them at all. On that same day, there was a fellow--he was either a carpenter or a painter. He was driving a truck on an assignment, and when he got to Telegraph--there was a blockade--he stopped his truck and got out and walked from the side street down toward Telegraph to see which way he might be able to go, if he could maybe go back on the street and get across Telegraph. A deputy sheriff comes around the corner and shoots at him and just throws him off his feet. This was crazy.

Hicke: Yes, panic.

Poole: We got a lot of reports. We had some problems. We knew about these things, but the witnesses--most of them--would be demonstrators, and they wouldn't talk to us. Even though I had meetings with some of them, they had said to me, "We trust you on that, but if we give you the information you want, our names and addresses and what we know about this sort of thing, that will be turned over to the FBI, and the FBI will arrest us for dodging the draft." They didn't want to do it. I couldn't get witnesses for what I knew had happened.

Finally, I talked with the Civil Rights Division of the Department of Justice, and they had a couple of young people out there, and they sent them out here. These youngsters made friends with a lot of them and persuaded them that we were serious out here and they ought to cooperate. So they finally agreed. They said they were being represented by the American Civil Liberties Union. At least some of them agreed that they would tell us what they knew. So I brought them in quietly. Oh, first I had to get the approval of John Mitchell, who was then the attorney general. The rule at that time was that no United States attorney could initiate a civil rights case without the permission of the Department of Justice. The southerners had it all locked up, you see. I hadn't been able to do it, because I couldn't get these witnesses in, and when I finally got them, someone called me and said-- Oh, let me tell you what happened.

We were within days of convening a grand jury. There were two incidents during World War II. One was the police in Chicago raided the home or whatever it was of the Black Panthers, and the police in Los Angeles did the same with Black Panthers in Los Angeles. A couple of people were killed and that sort of thing.

The Department of Justice Civil Rights Division had been assuring me that we were going to get this thing through. After those two incidents, they called me and said that John Mitchell-- Attorney General Mitchell--said that this department was not in the business of prosecuting law enforcement people. So he wouldn't give the authorization. I remember getting the chief of the Investigative Division of Civil Rights Division and I told him, "I'm going to tell you, I guess it's time for me to go. I've been here long enough. But on this thing, I think it's a disgrace that Mitchell, who apparently, according to what I had been told, had okayed this investigation, and I'd geared up for it, had now had decided that he will not do it." I said, "Let me tell you, I'll assure you one thing, this information is not going to stay secret. Because when I walk out that door, it's going to walk out with me." "Try to hold off," he said, "it may weaken. It's not a good idea to do it." So I did, and then I got a call back.

"John Mitchell says okay, you can proceed. Not only that," he said, "but he says he will announce the convening of the grand jury." I said, "Do me one more favor." He said, "What's that?" I said, "I have never believed that it was any business of a district attorney or United States attorney to be announcing what his grand jury is going to do. That's done purely for some public purposes. But actually we want the members of the grand jury to be selected and to have the independence of mind and listen to the evidence, not to get the backwash of how newspapers write the story up, what's going to be coming up, and that sort of thing.

If you would, tell him that out here, I have always thought that the best policy was to make no announcement, but eventually that we'll tell the grand jury that it's been done with the permission of the attorney general, but we'll not put this out." They said, "Okay."

So I convened the grand jury, and by this time, the grand jurors were naturally skeptical of these radicals who were on Telegraph Avenue, and some of them thought that they deserved what they got. When they found out what the cases were going to be like, they asked me, "Aren't these really largely a bunch of Communists and radicals and that sort of thing--draft dodgers?" And I said, "Perhaps. Let me suggest this to you. Why don't you start off with the assumption that that is who these people are, and then we'll bring the evidence in before you? Then if, after you've heard the evidence, you don't think this is a proper case to proceed on, then you vote no on the indictment. I can't do anymore than that for you. I want you to give me a hearing on it, and then I want you to use your common sense on what you hear." So we put all of these witnesses in there. We had the guy who got shot in the leg, and he told how the deputy sheriff just came around the corner, saw him, and boom! That's what they were doing. Instead of having shotguns, they had this fine stuff and it doesn't go through.

Hicke: Oh, sprays?

Poole: No, they had these thirty-ought shells in there. It will put a hole in you like this [demonstrates large]. I had talked to Frank Madigan, who was the sheriff of Alameda County, and I asked him to let us have the records of what the shots were that were issued, and what the instructions were. He told me he wasn't going to give me a damn thing. I said, "You'll give it to me, Frank." And he said, "Is that so?" I said, "Yes, because I'm going to subpoena them from you. Actually, I'm going to name you right there as the person who's in charge of it, who has custody of these things. You're going to do it. You're going to come to the grand jury and do it." "We'll see about that," he said.

So I had the United States Marshal go out and serve him. Well, someone called from his office and said he would be late. He was at his attorney's office, but he would come. He was going to come. So he came. I was out in the hallway when he arrived there. He said, "But first, I want to go in and talk to the grand jury." I said, "You're here as a witness and to bring some documents. You first turn them over to me, and then we'll see whether the grand jury wants to hear you now or later. I suspect they're not going to want to hear you now, because they haven't heard any evidence yet. I suspect that this isn't the time, but

that will be their decision." He said, "I won't go anywhere until I get a chance to talk with them and I won't do anything." I said, "Where are the records?" He said, "They're in my car." I said, "You'd better bring them, Frank, because if you don't, I'm going to have you held for contempt of court." He talked with somebody. I guess it was his lawyer. He went out and he brought the records, or some of the records anyhow. I asked a couple of my assistants, "How many records do you think he destroyed?" They said, "Well, not all of them."

I said to the grand jury, "The sheriff of Alameda County wants to talk with you. If you want to hear him, I'll bring him in, but I would suggest this much. First of all, you don't hear him with respect to the facts of an investigation except that [unless] you hear him under oath, like any other witness, and he's then subject to cross-examination. "You can hear anybody you want to hear, and you can do it any way you really want to do it. But I will tell you, if you're going to have him come in talking, and not under oath, I don't think you should do that, and I won't come in for that. But you're the grand jury." They thought and said, "Well, if you don't think we should." I said, "What I think is that he wants to tell you before you've heard any evidence what the evidence is going to be. I think he should do that later on if he wants to, but be assured that we want him. We have subpoenaed him to come, but it's not for the first day."

They finally sent word out to him that they would see him at another time. Frank said he talked to his lawyer and he said, "I don't think I'm going to turn these over." I said, "I think, Frank, if you're going to do that, you ought to go with me upstairs to the district court, and let's take it up with the judge up there, the duty judge, and he can probably give you advice that you'll listen to. Then you can act on your own."

We put that case on, and it went on for several weeks. There was a lot of stuff in the papers about it. The grand jury indicted ten or twelve of the deputy sheriffs. They were identified. Those are tough cases.

I stayed on as U.S. attorney to finish this indictment. President Nixon had already selected my successor. Jim Browning was his name--no relation to ours here [Ninth Circuit Judge James R. Browning]. I had him come over to the office one day, and I told him about this investigation. I said, "I'm sure you know about it. Everybody knows about it. But the grand jury is pretty much finished with its inquiry, and it has occurred to me that maybe you might wish to take it on and decide for yourself whether you think an indictment is appropriate, because you're going to have to take the responsibility. I am not trying to pull anything

fast on you." So he said he wanted to think about it. I guess he went around and got some advice from somebody. He called and said, "No, I think since you put it in, you ought to finish it."

On the last day of the grand jury, they agreed on an indictment of at least ten deputies. We went before the district court and returned the indictments. That was pretty sensational too. What Jim Browning did was he selected two of the people who had been my assistants to try the case. They tried it, and the jury hung. I had gone by that time. Then they tried the second trial, and I think the jury acquitted most of the people, but hung on several of them. Jim Browning called me, and he said, "How about coming over to the office? Let's talk about this." So I went over. He said, "I am reluctant to go to trial a third time on this, because there hasn't been any movement of the trial jury. Two of them have now refused to return--not an indictment--to convict them. What would you do if you were in my shoes?" I said, "I don't have the faintest idea how it is to be in your shoes. What I say to you is this: I appreciate the fact that you authorized the trial to go forth, and you put a couple of my old former people in to try. Now you raise the question whether you should try it a third time. Jim, I'll just have to tell you, that's a decision you have make. Remember, I offered to let you decide whether there should even be an indictment, and you felt that since I had amassed the evidence and done the work--

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Poole: --and now you have caused the trial to go forth, I think you have to make that decision." So they dismissed the case. I felt that it was a pretty hot potato for him to have to handle. He had just gotten in there.

Hicke: Do you know what the name of that case was? Did it have a name, or was it-- It's not in the record is it, since it was not appealed or anything?

Poole: I think I have some clippings somewhere on it, if I can find them. As I say, there were about ten deputies who were named in the indictment. They were the defendants. There was a lot of interest, and the Board of Supervisors of Alameda County issued a statement blasting Mr. Poole for his insistence upon trying to prosecute these people. I was on the campus at that time, so the press followed me over there, and they said, "What comment do you have?" I said, "Which supervisor was it whom you're quoting there?" They gave me his name. I've forgotten his name now. I said, "Isn't he the same person who was in the news about two weeks ago because he was driving a county car drunk and wrecked

it?" [Laughs] They said, "Yes." I said, "Well, a law enforcement person if I've ever seen one." [Laughter]

The 1966 Miranda Decision

Hicke: Let's back up to 1966 and the Miranda decision. Can you tell me about the impact of that?

Poole: That was one of the Warren Court's high moments. It came as a great shock to a lot of law enforcement folks, because the basic rule of the Miranda case was that a person who is in the custody of police is naturally under some constraint. It is easy to get him to do what the Constitution says you can't do--that is, you can't force a person to incriminate himself. The law enforcement people have often done that. What the case said was that when a person is in custody, whether he is in custody behind the bars or whether it's upon the street, when there is the police present and he has been put in custody--and by custody, we mean he's not free to leave even though you might say, "Well, we didn't tell him he couldn't leave," If in fact the situation is such that a reasonable man would believe himself not to be free to leave because of the police attitude, the police questions, the accusations that are made and so forth, then he is entitled at that point to have counsel. And unless he has counsel, any incriminatory statement he made would not be heard by the court, because as a prophylactic matter, the court should not entertain evidence which is obtained in violation of the constitutional right of a person not to incriminate himself. He's entitled to have counsel.

That set the world on fire almost, because it was contrary what police had done for centuries. Lots of people said everybody will be claiming it. Some courts have expanded on the doctrine, some have whittled it down, but the basic idea is still there, and it was a revolution in the administration of criminal justice, because, for the first time, the police were told, You've got to back off. Sure, if you have probable cause to arrest, you go ahead and arrest. If you have probable cause to search, you go ahead and search. But you can't convict him out of his own mouth at a time when he is in custody and have that used in a court of law.

A strange thing happened many years later on that. This court had a case--I don't remember the the name of the case--but we had a case in Nevada or it may have been Arizona where the police had an articulated practice which was that if you got a person in and

he wanted counsel, they wouldn't pay any attention to that, then let him go on and clam up if he wanted to. "We're not going to read any rights to him. We'll just let him go on and do all the talking if he wants to talk, and we're not going to say anything else to him. Then, when he gets into the courtroom and they say, Did they read his rights to him? we'll say, "No, but he volunteered these statements. We didn't say anything to him. We didn't have him do it." We knocked that one out.

Hicke: So, they thought that if they didn't ask him the questions, that wouldn't count?

Poole: That's naive. Anyhow, let me say this. It has become pretty much institutionalized now. There have been a lot of refinements on it. The courts have not infrequently said, "The Supreme Court decided about two or three years ago a case in which it held that once"--what really happened is the police will let you talk and talk and talk until you're exhausted, and then they'll move in on you--but what the Supreme Court said is, "Once a person in custody has exercised his right to have a lawyer present, the law enforcement people must not approach him again with a request that he talk to them, because when he has said 'I want a lawyer,' that request stays on the table until he has had a lawyer."

There have been all kinds of efforts made to elicit from a person something for which the police do not want to take responsibility. But by and large, it is still an active and pervading principle, and it's one of the most important the Supreme Court has made in the field of criminal justice. The responsibility for getting a voluntary statement is up to the policeman now. Police have all kinds of ways of--they lie! They say, "I read him his rights." Or they say he said, "I don't need a lawyer." So it becomes now a credibility thing. Most judges tend to accept the credibility of the police rather than the defendant.

Hicke: You're saying it's just the policeman's word against the defendant in some cases as to whether he read him his rights or not. Is that right?

Poole: They say he said this. And the guy says, "I asked them to get me a lawyer and they said, There isn't going to be any lawyer. As a matter of fact, we tried to call somebody. He wasn't in."

Hicke: So how do you resolve that?

Poole: Sometimes you don't resolve it. Sometimes the trier of fact, whether it's the judge or jury, accepts the policeman's word. But it takes a whole heap of things, though, for a really good defense

counsel not to be able to penetrate that. First of all, trials today have as much discovery about the people in the trial before they go to trial as they used to have in the entire process in the old days. So they know, for example, these policemen have had some of the conduct charges made against them, or they trip them up on something. Not all policemen are smart enough to beat all smart lawyers. The fact that there is this possibility is a restraint. It is a restraint, and the prisoner is at a disadvantage, and that's what the Supreme Court said in announcing the rule. You're not going to get him on even ground all of the time, or even most of the time. But if a policeman can't convince the trier that this statement was freely made, and that the witness, in effect, declined or waived it, then it depends how the judge rules. "Hanging Johns" will hang him every time.

It has been a revolution. We have some other doctrines too that put some restrictions on prosecutors, on things that they can say. Even if the person has been warned of his rights and an accusation is made by somebody to him to which he remains silent, you can't use that silence against him, because the silence is at best equivocal. A lot of things used to trap people up. They say, "I told him." I said, "How about that?" [Were you told?] He just didn't say anything. So the question would be, did he deny that?

Hicke: So silence would be against him. Yes.

Poole: It is not supposed to be. It used to be in the old days that under circumstances where a person is innocent, that would have been rejected. They don't do that any more. It has been an important development. I think it has a direct reflection on what a civilized country ought to do with respect to implementation of its conscience. A lot of people have gotten out of it on that account, but the judgment about how civilized nations operate--it is not how many people didn't get tripped up and imprisoned, but it's how decent is the system by which we treat those when we try and prosecute. There are a lot of lawyers who do a very good job with their clients. Pretty much now, you've got to do it on affirmative evidence, not simply drawing an inference out of a nothing. I think that was a very important decision. The Warren Court was criticized mightily when it came down. Now people accept that as being the law. It's just that we do have a whole lot of tactical areas in which the Supreme Court has held that it's a credibility issue. A whole lot of jurors are prone to accept the policeman's credibility rather than that of the defendant. It's not home free, but the rule is there, and a lot of defendants lie. They lie about it. But there's no point in

talking about "I'm reading him his rights while I'm beating him up."

Hicke: Some progress.

Poole: Yes, some progress, some progress.

Hicke: Well, maybe we ought to stop for today?

Poole: Whatever you say.

Private Armies in the 1960s ##

[Interview 7: July 30, 1993]

Hicke: We talked about the sixties last time quite a bit, but I'd like to pursue a few more topics, and one of the notes that I have on my outline is private armies.

Poole: Well, what really is meant by that or what the reference is, is that various groups and organizations, and particularly the Black Panthers, made a lot of public spectacles by professing to be well armed and all that to repulse attacks that they said were going to be made against them, and they were in a sense, in their view, the strong, armed defense of all black people. If you remember, there was the Black Panthers, there was Malcolm X, and they were-- Malcolm X and his group were verbally militant. They were much more in the mold of Muslim theology, and that sort of thing, than were the Panthers. The Panthers were ostentatious, they marched, and they had a lot of displays. They had quite an establishment. They collected quite a bit of money. There was some question where the money went at times.

I was the United States attorney, and they were a group that was in the special attention of the FBI. They made statements that were, in my judgment, much beyond their capacity to execute. As a matter of fact, I used to be able to converse with them pretty well, because, while they thought I was a lost soul they didn't subscribe to, they didn't think I was talking to them to compile evidence on them. From time to time, they would come out to the Federal Building on Golden Gate Avenue, and there would be a rally, and this would have been publicized well in advance, and so you might have some thousands of people out there and the streets would be blocked. The custom was when there were such demonstrations, after the law enforcement people became used to them, they used to shut the doors and block off the entrance.

People who were inside would be allowed out, but they didn't open the door too wide, and that sort of thing.

They would meet on the steps on Golden Gate Avenue in front of the building, and this was not just true of the Panthers, it was true of all the groups who wanted to get some attention. They would come out there--whether it was the Vietnam War, whether it was the recruiting of fine young to go off to be slaughtered in a far off country, whether it was lack of jobs, whatever it was--they would come to the Federal Building and do their thing. This was always something that the federal, as well as the state and the city, had a lot of hostility about.

Hicke: Towards the groups?

Poole: Yes. They disapproved of them.

Hicke: Yes, well they were causing them a lot of trouble.

Poole: They were causing them lots of trouble, and they didn't know why they should be tolerated. I said, "Well, because there's a little thing in the Constitution of the United States about the right of people to seek redress from the government, and that kind of thing. That's why they're here. Not all of them know that, but some of them know it. They come here because this is the representative of the government to them. When they shut off traffic, as they have done, that is a situation that creates a great deal of confusion and problems for law enforcement people, but that's what happens when they gather at a single place and exercise what the Constitution believes that the minutemen did when they met at Concord Bridge, what the people did when they had the British in Boston and had the Boston Tea Party and threw sugar over the wharves. That's what happened all through history, and you're witnessing a part of some other history. It may be forgotten quickly, but that's what it is." They thought I was kind of nutty.

Hicke: That was a good way to explain it to them.

Poole: Well, by being there, I could tell them. They wanted to kind of kick them back out. I said, "No, let them alone [one by one]. They're not doing any damage. It's inconvenient, but there's no damage."

When the Panthers were going to come out there, they would sometimes advise me of it in advance by phone, or maybe a couple of them would come over to my office. Eventually, we got to the point where we could establish some ground rules, and they could understand that honoring these ground rules would enable them, up

to a point at least, to be more successful because they wouldn't be just a milling mob of people.

I remember at one of those when a young white chap-- They had these two flagpoles out in front of that building, and the flags were up high enough on the poles that they couldn't be reached. But this chap shimmied up one of the poles and he cut the rope on the flag and it came down. As a matter of fact, the Panthers got so mad with him [laughs] there was some pushing and shoving. So, the police said to me, "What shall we do with this guy?" I said, "Before your very eyes you saw him damaging government property. Take him in. We'll talk to him later on." So they did. The Panthers were, in effect, saying "We saw it happening." As I say, there was never a question of trust, because I never got in any position in which they had to trust me. I did what I had to do, and they did what they wanted to do, and they understood that I wasn't rushing out to stifle them. They could yell all they wanted to and say what they wanted to.

From time to time, I had talked with specific members of that organization. We would talk about situations in which they felt they were being wrongly treated. I remember when I think it was Eldredge Cleaver took off and went to Cuba. I talked to his friend, and I suggested that that was a dumb thing to do, because he was going to have trouble getting back. He was on parole, I think it was. I think he didn't return until I had left the office, or I didn't have anything to do with him.

Beyond that, we also had an interesting case that involved a great many guns. It was a fellow named William Thoresen, and his father was the executive president of a steel mill complex out around Gary, Indiana. Thoresen was a person who was somewhat emotionally troubled. He had had some speech difficulty as a young man, and his people were wealthy enough that they hired a speech therapist to help bring him out of that. She did, to the extent that she and he got married. They came out to San Francisco.

One day we got word--I guess it was the Alcohol, Tobacco people [Bureau of Alcohol, Tobacco and Firearms]--they got word that this fellow, Bill Thoresen, had a lot of weapons in his house. He lived up on Broadway. He lived just about a block away from the large house which was the house of the archbishop [laughs] of California up on Broadway.

So the agents got a warrant, and one of my assistants went with them to serve it. They went in there. I'm not sure whether Thoresen was home or not. If he was, they put him under arrest. But they went in the house, and the house was filled with weapons. It was just unbelievable. So my assistant, who was there, called

me, and he said, "I think you better come up here and look at this place." So I went up there, and when I went to the front door and rang the bell, they opened the door, and there down the hallway pointing at me was a thirty-seven millimeter anti-aircraft gun. [Laughs] The house just had guns and ammunition everywhere. I don't mean just a gun or two. They had enough so if you were thinking of a plan to supply weapons to a revolution where you were going to overthrow the government in some country, that was enough. They had, for example, all kinds of army weapons, and they had bayonets, and they had a lot of picks and shovels. They had racks of guns and just countless containers of bullets and incendiaries.

While we were there, word got out somehow what it was. I think it was the same people who tipped the ATF people who told the press about it. The press was hammering at the door.

Hicke: While you were there? The press knocked on the door while you were there?

Poole: Yes, but I said, "You don't let them in." Another thing was, it was a very large house. In many of the upstairs rooms lying carelessly around on a bureau or table was lots of money. That's what I saw when I first went there, and the agents were inventorying. I called the guy in charge, and I said, "I don't want anybody up there going through these rooms with all that money there without you being present. You do it one by one, because we're going to hear from this, and I'm going to tell you right now that I'm not making any accusations against your people at all, but the way to prevent trouble is that you take the responsibility in each of these rooms. I mean, have you got me clear?"

I went downstairs and there were barrels with all kinds of cartridges in them--rifle cartridges, there were torpedoes, incendiaries. [Laughs] I'll tell you, when I saw all this stuff, I decided I'd call my wife and tell her, "Look, I'm going to be here for sometime, because I want all this to be inventoried, and I want some controls put in before I can leave here."

Somehow we got word--I'm not sure whether it was the same day or the next day--that there was a couple who lived a block or two away, and they had a garage, but they either didn't have a car, or it was a two-car garage and they only had one car. I've forgotten now what it was. They heard about it, and they called, and we went over there. There under canvas, mounted on a four-wheel gurney of some sort, was, I think it was something like a seventy-five millimeter French repeating cannon. [Laughs]

Hicke: All this in the city of Saint Francis?

Poole: By then we had discovered there was more. What we discovered was that there was a warehouse across the bay in Emeryville, over that way. And that warehouse was chock full of guns and ammunition. We went over there. Somehow the press got that before I did, and they took some pictures. I was standing there watching them count the stuff.

We sealed the warehouse up and took all that away. I think we brought them to the Naval Weapons Station at Concord.

The Department of Justice couldn't believe this, and we did not know, with any certainty, what was the motive for gathering this. There was all kinds of speculation. He was selling arms. In fact, we knew that he had disposed of some arms, and he didn't have a permit to do it. So we brought several charges against him.

Hicke: Did you get hold of him?

Poole: Oh, yes. He and his wife came home [inaudible] and he posted bail. We sent it to the grand jury, and we charged him with the specific arms violations. And he maintained that he just loved to collect these things. I didn't believe him, but we didn't have much in the way of showing any connection between him and any of the South American or Central American guerrillas, or any of the African countries. We didn't know.

Hicke: Could he show where he had bought them?

Poole: Oh, yes. We had invoices for a lot of it. His father was a millionaire. He had some money in his own right, and what he said was he just loved to collect these things. We didn't believe that. The agents got some trails indicating that there was some gun running going on. Most of the trails weren't very substantial. They were second- and third-hand things that we got.

We indicted for the simple act of possession. They got Jake Ehrlich to be their lawyer. And Jake Ehrlich, who was famous for his great flashy cufflinks, and all that--Jake Ehrlich was around the courthouse dangling his cufflinks and making those [typical] statements. They moved for a change of venue and we refused it. We tried him and we convicted him.

But they appealed, and this court, the Ninth Circuit, held that the trial judge had erred in refusing to accord to the defendant his right--he had a prior [conviction], you see, and that's why he couldn't have guns. He had a prior felony

conviction. That prior felony conviction also had to do with arms. So halfway through the trial, his lawyer wanted to challenge the validity of the conviction in that prior case. They routinely did this. We paid no attention to it.

But after he had been convicted, the Supreme Court of the United States handed down an opinion which held that where you have a prior, the defendant has a right to show, if he can, that the prior conviction was invalid because he's been denied due process for something, and that that would weaken the prior. So they reversed our conviction.

And also there was another--I'm not sure whether it was the Supreme Court, or which court ruled on that other thing--but there was a question about publicity. There were headlines in the paper and everywhere. They claimed damage--prejudice as a result of the pretrial and trial publicity. The press was just speculating. Anyhow, when you get in that situation and there is a lot of publicity, you think about changing the venue to another place. We had to try the case again, so we decided we would change it down to Fresno. Of course, that was inconvenient for a lot of people, but that's exactly what we wanted it to be.

So we went down to Fresno, and my assistants said, "Are you going to come down?" I said, "No, I'm not going to go down to Fresno. I'm going to send you down there. They've got enough publicity. If I walk in the courtroom and the press has got 1,500 questions, I may be tempted to answer one of them, so you just do your job, and let me know; keep me in touch with where you are. If you have any problems, let me know. I may drop in on you and see how you're doing, but don't count on it." In fact, I did send my chief assistant with them down there.

Hicke: Do you recall who that was?

Poole: I think that was Richard Urdan. They went down there. In the meantime, another thing had been developing, which was that the Thoresens weren't getting along so well, because he would fly into these uncontrollable rages and she would be black and blue. In fact, I sat down to talk with her one day. I said, "Look, what we have is serious enough, and I'm not interested in hearing prurient details of difficulties that you may have between the two of you. What I am thinking about is your own safety. You tell me about that." She didn't want anything done about it. She told me one time that he had apologized to her and said he wasn't going to do it, and about two days later he was slamming her all around the place there. She was grown, and she--you know, no one saw them in the act.

The trial was being set up down in Fresno, and we needed a lot more time to set it up down there, because there were some things we weren't going to be able to use from the former trial. In any event, Thoresen was on bail, and as part of the conditions of bail, he was required to get permission from the court if he traveled outside the area where he was and where he lived. Anyhow, what we heard was that he had really resumed this pretty wild and violent treatment of his wife. So one day he was in bed asleep and she got a gun and she shot him six times in the head. She claimed that he had violently mistreated her.

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Poole: You wouldn't think this case could have gotten any more publicity than it did, but they charged her with murder, and she told her story, and she got acquitted.

Hicke: Where did she find a gun after all this?

Poole: Well, I wasn't surprised, because it occurred to me there were a couple of times in between when she knew that he had acquired them. This time she got it. But she was tried and was acquitted, and that was the end of the Thoresen case. We never did, at least I never got anything that was firm enough for it to be accepted; we never got anything specific. We knew he had been down in Central America, and there were some rumors down there, but nothing that was strong enough for us to be able to present to a grand jury. That was one of those things. All of this went over a period of about eighteen, nineteen months, I guess.

Hicke: Private army was the right word for that one person.

Poole: I'm still not sure what he was doing. We thought that somehow he had become aware of some movements out of this country in Central America and that he would be stockpiling this ammunition, and at an appropriate time was going to send it there. I didn't know what the occasion would be.

But that was the most we ever had to do with weapons. I think by the time Thoresen had died it was probably about 1969 or 1970.

There were a lot of incidents of violence. Remember the Chicago Seven disrupted the 1968 Democratic National Convention, which was held in Chicago. Among them were the Black Panthers. There was also a murder on the green up at Yale. I'm trying to think who it was. It was Charlie Gary's client, and he was charged with murder. Then he was one of the Chicago Seven who had been accused of disrupting the convention. There was a great deal of turmoil about that. They were indicted under a statute that

had been enacted by the Congress about 1987 to deal with the strong violence that was manifested in a number of places, particularly by the Students for a Democratic Society. Remember they had the execution at Kent State--the National Guard. A lot of things would trigger these people to get together with loudness and efforts to block traffic. It was a situation in which it was pretty easy to provoke the law enforcement establishment because they would do some just ridiculous things.

Troubles at the Concord Naval Weapons Station

Hicke: You were the U.S. attorney during some of the most troubled times in our history, I think.

Poole: There was a lot of it. One time, some of these people--I've forgotten exactly who they were now--but they got a log of a young tree and they put it on the railroad track, and it was discovered in time to stop it. But then I got a great many demands.

I remember Bill [William] Knowland, who had been a United States senator and had come back to the [Oakland] Tribune, his family paper. There's a federal statute on the books that provides for the death penalty for someone who attempts to wreck a railroad train. The presence of the log was spotted maybe a whole day before the train got there, but that made no difference. People were demanding for me to have the grand jury return this indictment. The death penalty was involved in this. I said, "This is the silliest damned thing I know of." But, you know, in a way it was frightening.

When the Tribune didn't get what it wanted, they printed a couple of articles that reflected on my good judgment, common sense, and trustworthiness to hold office. I knew better than to argue with a newspaper. When that happened and people came over and asked me for a comment, I said, "I'm not going to comment on what the papers have said. In our judgment it was a damn fool thing to do, but also in our judgment, this was deliberately put there at such a time and place"--the train ran there about twice a day and it was a freight train hauling supplies. That was what it was about. It was hauling supplies from the Port of Oakland up to the Concord Naval Weapons Station where they stored all these weapons.

Hicke: War protest or something?

Poole: Yes, that's what that was. I said, "If they'd done the same thing on the right-of-way where the trains go by at sixty, seventy miles an hour, it would have been altogether different. But, obviously, they put it down there and in the course of the day, somebody driving a car on the adjacent highway said, 'What's that doing on the railroad track?' And that's what really happened there." I could have kicked those students all over the lot who did it.

You remember, there was always an effort to try to enter the premises of the Concord Naval Station. The last thing I remember about it was there was this group that sat on the tracks when the train was coming, and one of them didn't get up and he got his legs cut off.

Hicke: Oh, yes.

Poole: But I mean there's been this fascination with trying to shut down the Naval Weapons Station, and that sort of thing. They would bring boats out in the vicinity of the Golden Gate Bridge, not Golden Gate, but of the Bay Bridge to prevent ships from either taking off from the Port of Oakland or coming to the Port of Oakland, and threatened, "We'll put our bodies in the way and you'll have to kill us." I talked to the navy people about it, and I suggested to them that they get one of their big ships they had and go by there, and what's going to happen is, they're going to put their hands up on the gun rails of the boat, and they think that maybe they can rock your boat over. So turn the bullhorn on them. It was the dumbest thing they were doing. That I thought was idiocy.

More Troubled Times

Poole: This lasted; after I had left the U.S. attorney's office, it was still going on. They had the riots over in Oakland, and they had the shootings. I think we talked about that before. Actually, I suppose, given the number of people who made their way out here because they could find a community of people who felt like them, we were probably fortunate that no more happened than did. It succeeded rousing in giving to this area a reputation for disturbance and that sort of thing, but they weren't killing anybody in those days. There's more shooting and more violence in Oakland now than there was in that time.

We had problems, because we felt in any case where we had a violation, we were going to do something about it. But we didn't feel that we had to throw our whole hearts and souls into

ferreting out these people. I didn't feel like that was my job at all, and I had to keep cautioning law enforcement people that the idea that you're going to go into this with your clubs swinging is just the wrong idea. You have to use force sometimes to get these people out of whatever they're doing, and they want to bust in a door or something like that, or if they want to lie down in the street and stop traffic, you have to drag them or pick them up, or do something like that. But if you make it a personal struggle between yourself and them, that's what they want. They've accomplished what they want. I would think that while this may seem strange, it calls for a lot of professionalism to do your job and not be doing it out of simply counter-motion, as they were doing lot of times. We had some pretty bad cases there from time to time.

Hicke: So you had to counsel your own people sometimes about restraint?

Poole: The people who furnished the security at the Federal Building, for example, or down the street, down Golden Gate Avenue, where the draft boards were, they were pretty well trained, and the only time I ever saw the Secret Service or the FBI really swing their batons or their blackjacks was when Hubert Humphrey, who was running for president in 1968, came to San Francisco. He made some remarks condemning those people who were opposing the Vietnam War; what he was saying was we've got people over there, we can't leave them there, we're not going to leave them there. I guess, in part, he had to do that to defend his candidacy against Richard Nixon.

As you recall, in that year Bob Kennedy had been assassinated. He [Humphrey] had taken a position that was not as strong as Bob Kennedy had, and of course, President Kennedy had long been dead.

The only speech that Humphrey made in San Francisco during that particular time was at the Civic Auditorium. When he was doing that, we had a lot of special concern about it. There were a lot of exits and entrances to the Civic Auditorium, so we talked with the security people about it, and they had people stationed strategically at each of places there.

When the speech was over, the number of law enforcement people who gathered around a particular area of exit increased, and that brought the mob on. They were yelling and pounding and screaming and doing all these things. What they didn't see was that the limousine came out the back of the place, and when they saw it, they made a rush for it. So here you had Secret Service men standing on the running boards--you know, they have running boards on the car for them to stand on--and some guy was fast enough to get up to within reach of the car almost. The secret agents--I

saw them do this--took their sticks and batted him off, and he just went sprawling out in the street, and the car never slowed down; they took off. Then there was a demand that day and the next day that we prosecute the agents.

Hicke: Prosecute the agents?

Poole: Oh, yes [laughter], that we prosecute the agents for brutality. I said, "I don't think it would be right for me to express my feelings in a comment, and I'm not going to do it." Boy, he got away. That car really took off. I mean that fellow didn't believe they weren't going to stop for him. I said to one of the Secret Service agents, "This guy is crazy." They said, "Shall we arrest him?" I said, "He didn't really get to do anything. It will create more of a fuss if you do that. He'll become martyr, and we don't want that. Tomorrow he's going to be sore as hell the way he hit that ground down there." That was pretty scary.

He [Humphrey] had been down at Stanford, and he had given a speech down there. I didn't go down to Stanford, but there were some boos in the auditorium down at Stanford. Those were pretty volatile times. I will tell you, they were pretty volatile times. Of course, you know that assassination of the kids at Kent State --well, I call it an assassination. Why the guards with live ammunition shot those kids, I don't know. You could not accept that kind of conduct.

U.S. Attorney General Bobby Kennedy

Hicke: Let me switch subjects just a little bit, if I might. I have here a picture of you shaking hands with Bobby Kennedy when he was here in 1961, and you held a joint press conference.

Poole: I went to the airport and met him. [Poole removes his microphone and is somewhere across the room, searching for another photograph]. My daughter Pat wanted to come with me, so I said, okay. Some photographer took a picture of the three of us there, and she's trying to keep up with us.

Hicke: Charlotte was there too?

Poole: Yes. She graduated from the School of Journalism, University of Minnesota. She came to Pittsburgh where I was living. That's how I met her.

Hicke: Yes, you've told me a little bit about that. Anyway, we're back to when Bobby Kennedy came in 1961 and found San Francisco was less troubled than most big cities. Did you talk to him often or see much of him?

Poole: I used to talk with him if there was something to talk about. Sometimes I had some disagreements with the people in the Department of Justice, and I would challenge them on what they were suggesting was the thing to do. They would say, "This is Bob's idea, you know." I'd say, "Well, maybe I can talk with him." They'd put him on the phone. We'd have our discussion. He was accessible. My feeling about it was that the fewer times you had to bring the attorney general directly into something, the better it was for all.

Jimmy Hoffa

Poole: I remember when we had initiated a grand jury investigation into Jimmy Hoffa, who was a labor leader. There had been a sale of the property where the Whitcombe Hotel was; it was the Whitcombe, now it's something else on Market Street there between Eighth and Ninth. He [Kennedy] was really after Jimmy Hoffa, and they thought that this transaction smelled, and they thought that what had happened was the Teamsters, of which Hoffa was the head, had vastly exaggerated its worth and, therefore, had succeeded in getting a large loan for more than its reasonable worth.

Hicke: Did this have to do with the pension fund?

Poole: Yes, pension fund. So they were all hopeful that they could do something with this. I had assured the attorney general that I would work personally on this thing, you see. So, I did. What I did was to get some impartial appraisers, and I told them, "Given all the conditions--and if you need any information I can supply you with the details, but I won't tell you what it is or what it's about--I want you to look at this transfer, and I want you to give me your straightforward opinion. What I want to know is what would be a reasonable maximum figure, given your own appraisal of the financial stability of the parties or the lack of it."

I got two or three different people who didn't know the existence of the others, and--I've forgotten the figures now--what they told me made it very clear that the appraisal that had been fixed on this building was not one that you could say was so entirely out of line that you could say it was a dissipation of

the [pension] fund assets. When I reached that conclusion, I called them, and I talked to--

Hicke: You called the Department of Justice?

Poole: Yes, I think at that time it was Ramsey Clark I was talking with. He was the assistant attorney general in charge of the Land and Natural Resources, and then there was the--

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Hicke: Okay, we were just talking about Ramsey Clark.

Poole: Yes, Ramsey Clark, and then there was the assistant attorney general in charge of the Criminal Division, and they had some bureau chiefs who were working on things like labor unions, racketeers, and that kind of thing. I told them that based upon everything that I had heard from people whose judgment I had no reason not to respect and trust, this wasn't going to work. You can't do anything. It may look like it's on the high side--at least one of them had told me that it was on the high side, but nobody had said it was off the wall. They said, "Will you tell Bob that?" And I said, "I sure will."

So he got on the phone and he said, "Why don't you come back here and bring what you've got there, and let's let these experts I've got here go over it with you?" And I said, "Sure."

I went to Washington. They said, "Did people [the appraisers] know who were the parties?" And I said, "If they did, they didn't let on. I didn't tell them. Obviously, nobody in this office knew it except myself and my chief assistant," who at that time was a fellow named Elmer Collette, "and his chief guy, who was Bill Spohn. Other than that, nobody knows anything about it." I just didn't see any reason why it should be discussed. I hadn't gotten the Criminal Division people in on it yet, because I wanted to cut down on the number of people that had to be bothered with it, and that was going to be my next step. I didn't go right away. It seemed to me they had something down in Dayton or something that they thought might work as an alternative. I think it was about ten days or so before I went to Washington.

I went back to Washington and we went over it. Bob was disappointed in it, but everybody agreed, before I left, that this wasn't the door to open. In fact, this was an alternative anyhow, and I think they made their move in Kentucky. I think that's where they started nailing Hoffa.

Eventually, some of that got out, and I got a few calls from people who were interested, a couple of whom I had known for many years. They were saying, "I've got to have lunch with you." You know, one of those things. So I had lunch with them, and they said, "I want to ask you, we've heard some rumors." And I said, "Well, I'll tell you, you hear rumors with your ears, but when you start putting them in your mind, that's when they weigh down heavily on you. Are they good rumors, are they bad rumors, or what are they?" They said, "We thought maybe--would you feel free to talk about some of the concerns of your office?" I said, "If it's something that concerns my office, I'd want to know about it." They said, "Not that. We think that the Department of Justice is being pretty heavy on labor." I said, "Gee, who?" They generalized, you know.

I said, "Let me put it to you this way. There are some things I know about, some things I don't. There isn't any need for me to know about much because it isn't affecting me. But if you want to tell me what it is you have in mind, I can either tell you yes or no or nothing, or that it's not something I can discuss with you." They said, "Do you have a grand jury inquiry going into any--not any labor people around here, but elsewhere?" I said, "You know I couldn't answer that question. If it were true, I couldn't answer it."

Then they finally said, "We understand that there was an effort made to persuade you to take some action against Hoffa." I said, "There isn't a day passes that I don't get somebody's suggestion about Jimmy Hoffa one way or the other. He's a very popular man on everybody's tongue. But I wouldn't say a word at all in response to any questions about him. I wouldn't say anything at all that would involve something less than absolute certainty. I know, what you're saying is that you think they've got something to bring on back in Washington. That's where you'll have to find it out, because I won't discuss it with you."

Hicke: What did they think they were going to accomplish?

Poole: I think people often want to be knowledgeable so that they can be looked up to by others for their knowledge and information and expertise. I get the feeling that something had been heard by one of the people I talked to. There was a story in the papers about the proposal on the Whitcombe Hotel. It wasn't a big story, because my recollection is it never did come off. But if it had come off, I guess there would have been a lot of speculation about what this meant. If it were true that there was an overvaluation of it, gross overvaluation, there could have been some heads roll. I could not believe that it would be that simple. I just wasn't convinced that we had anything out here. When I got through

talking with these people [appraisers] about value, and they told me what they did, I said to the people in the department, "Anything else about this that I don't know about that you want to tell me?" They said, "No, what we heard was a possibility." So eventually they did get him and they put him away--Hoffa.

Hicke: But you weren't any help on that score?

Poole: No, we didn't have anything to do with it, no. We had nothing to do with it.

Ramsey Clark

Hicke: How would you compare Bobby Kennedy with Ramsey Clark, for instance, or other attorneys general?

Poole: I was very friendly with Ramsey. He eventually became the attorney general.

Hicke: Right, that's what I meant, as attorney general. How did they compare?

Poole: Ramsey was not a person given to dramatic expeditions into relieving us of a lot of our criminal aches and pains. He was a very decent guy, a warm person. I liked him a lot. I've got one of his autographed pictures here too someplace. You could always depend on him. The only time he and I had a real difference of opinion was, he wanted to put one of those strike forces out here.

Hicke: That was the early seventies?

Poole: No, Ramsey was the attorney general.

Presidential Campaign, 1968, and Bobby Kennedy's Assassination

Poole: You remember, after the president was assassinated, Lyndon Johnson became president; that was in 1963, I think, the 22nd of November. Johnson and Bobby were never close friends, so with the president gone, as far as Bob was concerned, his future in the Department of Justice was limited. Lyndon Johnson would want to have his people there, and Bob was not temperamentally able to mesh it all out with Lyndon Johnson. He mourned his brother's death, and he was anguished over what he thought was the difference in the

administration's balance and what the administration would be like under Lyndon Johnson, who, at that time, did not have the track record that he ended up having on lots of things. He and Lyndon had never gotten along well, so he resigned as attorney general and went to New York and reestablished citizenship there, and then ran for and was elected senator.

His next thing was to run for the presidency. His running for the presidency caused Lyndon Johnson a great deal of anguish, and it divided a lot of people who were sort of caught between their feeling about Bob Kennedy and their obligations to the president, especially people in the administration. I was one of them, not that I was important. I guess I thought it quite possible that Bob Kennedy might very well beat Johnson. But I thought the best thing for me to do was to continue doing what I had to do, and to do it as well as I could, if the president remained Johnson or if the president were Kennedy. While personally I felt warm toward Bobby, there was no occasion for my office and its functioning to be at all involved in whatever their differences were, and that's the way we did it.

We would have meetings of the United States attorneys, and I'd go back, or I'd have to go back on business, and that sort of thing. Remember Lyndon Johnson had only about a year to go after Kennedy's death, and he ran against [Barry] Goldwater. He just crushed Goldwater, so that settled a lot of people down. There wasn't any doubt that Johnson was a formidable candidate. But Bob just kept going, and so it became very clear that there were two people against each other--Johnson and Kennedy.

Then in early 1968, Lyndon Johnson made his famous speech in which he said he was not going to run for a second term. That then changed the focus. Vice President Hubert Humphrey was going to run, and it became quite clear that Bobby Kennedy was going to run. It became clear that Richard Nixon was going to run.

Back at the Department of Justice that put a lot of people in a difficult position. I felt that when Lyndon Johnson said he wasn't going to run, I didn't have to channel my internal feelings about it anymore, because I knew Bob was going to run, and I knew also that I had to stay out of it, but I could hope. So this is 1968 now, and earlier that year Johnson nominated me to be a district judge. I said, I've got to reach for that first, before I do anything. I ran into difficulty with the senator [George Murphy; see above].

Hicke: You told me about that.

Poole: Yes. But in any event, when Bob Kennedy came to San Francisco, two days before he was assassinated, I went to the airport to meet him, along with some others. He and Eddie Guthman, who was his companion, went to the Fairmont [Hotel] and they had a reception there. I went to the reception and spoke to Bobby, shook hands with him. People were saying the Democrats are split. Sure they are, but this was a primary we had in front of us. So I thought he was going to make it, and he had such an enthusiastic welcome from people that it looked very good.

The night before, we had been to this reception. I got up early and thought maybe I could go to the airport, but there wasn't any room, so I said goodbye to him, and then I went back to my office. That night, Charlotte and I were both tired. We had been to several things, some for Bob. They had the big rally and reception [in Los Angeles]. It was going to be televised, so we decided to sit up in bed and watch the part that was televised.

So we're sitting up there in bed when he starts walking through. You could see him waving, and then we heard the shots. People were frantic, running back and forth. The prognosis was never good, so finally they announced that he was dead. I couldn't believe it. John Kennedy assassinated, and now Bobby was killed. You know, Martin Luther King had been killed in April. It seemed like things had just gone crazy. I thought of all the times when you would have expected violence, and it just hadn't come about. And there it was. All that weekend that is what they were talking about.

They flew him to New York. Then they had this long train ride. I'm trying to remember if the train was from New York to Washington or from Washington to New York. But remember, people put coins on the railroad tracks and that sort of thing. It just didn't seem possible in the Ambassador Hotel with all of these people around, and this crazy man comes up and--

Hicke: You can certainly be sure that you did your share to keep violence from overtaking people.

Poole: Those were some strange times, I'll say this. Johnson was still the president and people were booing him. Hubert Humphrey was running against Nixon, and they had that terrible time in Chicago at the Democratic Convention. It was just weird.

Strike Forces

Hicke: You know, you started out to tell me about the strike forces that were sent out here on the West Coast. Did you have to deal with them?

Poole: Remember now, Johnson announced that he wasn't going to run. I think it was like the 31st of March. I think that's when it was, the 31st of March, and he was not going to run. He, in effect, said that there is so much that needs to be done to get this war won and get it behind us, and so much needs to be done to bind up the nation's wounds that "I think I don't want to be distracted from the responsibility I have [as president] by running a political campaign, so, therefore, I will not seek, and, if asked, I will not accept the nomination to be again president of my country." I had just recently been nominated by him for the district court, and I thought to myself, What's he going to do? That's the way with Tom Dewey, he's not going to run. That's when I knew that we were going to hear from Robert Kennedy. I knew that.

On the strike forces, I went back to a meeting. They had a meeting at the Department of Justice of the United States attorneys from about the twelve or fourteen largest offices. Remember, they did have burnings, they had clashes, they had the Panthers, and they had a lot of things like that.

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Poole: A lot of people thought that the country was--I think it was the Tet invasion by the Vietnamese, and that took a terrible toll, and people were saying, "Why don't we just go in and drop it on them and get it over with?" Others were saying, "We can't do that," and others were saying, "Let's bring them out of there and bring them home. We don't belong there anyhow." There was some looseness about the control, which had people at odds against each other. The strike forces--I always thought that their mission was to distract peoples' attention. [Laughs]

Anyhow, at this meeting back in Washington, Ramsey Clark was the attorney general, because when Bob left, Lyndon Johnson appointed Ramsey. We were in this meeting, and they were talking about the strike forces, and I said, "I'm opposed to this thing. I don't need strike forces out here. What are they going to do? Who are they going to strike?" In fact, Ramsey wouldn't accept that. He was pretty tough. He said, "It is our judgment that this is needed."

Hicke: What was the basic concept?

Poole: I really think that the idea was to give assurance to people who were doubtful that the administration was going after the violence and criminality and all of these things that were upsetting people, to get our own house in order, and that sort of thing.

Hicke: He wanted it to look like something was being done?

Poole: Yes. I was opposed to it from the beginning. Actually, Ramsey didn't try to push it. He put them in some places. I'm not sure if Morgenthau let them come to New York City. I'm not sure about that now.

Hicke: Was he the U.S. attorney there?

Poole: Yes, Bob Morgenthau, yes. I think they put one down in southern California, if I'm not mistaken, but I didn't want them here.

Hicke: So they didn't put one here?

Poole: No, they didn't put a strike force here. The strike force didn't come in to San Francisco until later. They wanted to do something, and I said, "No." By that time, it after the election, and Nixon was elected in 1968. He took office in 1969.

I was still there under my understanding with Richard Kleindeinst, who was the deputy attorney general, and John Mitchell, that whenever they wanted this place, they could have it. There would be no problems. We would make an orderly and smooth transition. If, before they were ready, I determined what I was going to do, I would let them know. I wasn't going to just walk out and leave a vacancy at that point. So they understood that.

They then decided, well maybe now is the time [to send a strike force]. Someone from the Department of Justice called the office, and I wasn't there. I don't know where I was then. They told somebody that they were going to send out a fellow whose name they mentioned. He didn't come that day. I guess it was a week or so before one day, some guy showed up and said he had been told that he was in the vanguard of the strike force, and he was to have an office somewhere. I said, "I don't have any room for you, I'm sorry. I'm like other orphans, I don't have any space." He said, "Don't you even have a chair for a desk?" I said, "No, not at all." So, he talked to them [in Washington], and they decided that they had better hold off.

I think there were, at that time, in the Federal Building two branches of the Department of Justice. There was what was called the Admiralty and Shipping Section of the Civil Division, and there had always been an Admiralty and Shipping Section as a separate office out here as long as I can remember, even when I was first U.S. attorney and we were over at the Post Office Building. They did a lot of work out here, and they were involved when there was a shipwreck, and they also were involved when there was a maritime strike. It had been in existence, I think, since right after World War II, when they had a whole lot of shipping and so forth, and a lot of problems arose. So they got the Admiralty and Shipping people to give this kid an office. He would come over and he would want to borrow paper or something like that. Our guys would say sure, if he needs any supplies, give him what he wants. As a matter of fact, I've forgotten who it was now, but he was kind of a short guy.

New Administration Takes Over; Ending the Work as U.S. Attorney

Poole: I stayed in this office about almost a full year after Nixon came in. He didn't bother me much. It was kind of funny. They would have these United States attorneys' conferences, and they said that they wanted to use that to indoctrinate the new people. The old [experienced] people that were still there didn't need it, they said. There were a few of us left; Bob Morgenthal was still in office, I was still in office, and there were four or five others somewhere scattered around. But they said they didn't need to have us back there.

Hicke: You didn't get invited?

Poole: We didn't get invited. That was all right. People would say, "How come you're not there?" I said, "Because they say I know it all now." I told them they wouldn't have any difficulty in my surrendering the office if they wanted. As a matter of fact, I had a couple of offers [to go] in private practice that I wasn't terribly--first of all, how I thought about myself was that this was toward the end of 1969, I had been the U.S. attorney since about December, or when was it?

Hicke: 1961.

Poole: Nineteen sixty-one. The 28th day of June in the year of our Lord One Thousand Nine Hundred and Sixty-one.

Hicke: June 28th.

Poole: The 28th of June till the end of December 1969, and that was a full year minus twenty days of Nixon's term. As a matter of fact, we got along pretty well. The Department of Justice was dragging its heels and wasn't rushing to replace me. But Senator Murphy was anxious to get me the heck out of there. I think I told you this though. I was only a secondary object. He was mad with Ramsey as the attorney general.

Hicke: Yes, you explained that to me.

Poole: So he kept pressing them, and there were a couple of people that they mentioned. One time somebody called me from the Department of Justice and asked me what I thought of this guy--some person. I said, "It depends on what you're looking for. He's a good lawyer, he has a good reputation, and I think he's bright, a very bright fellow. I don't think he's had much trial experience, but you don't select the United States attorney to be in the courtroom trying cases every day, and I think he's got a good head. That's what I think you would be looking for." But none of those people got appointed. They finally brought in Jim Browning, by the way.

Hicke: Yes, you told me that.

Poole: He was a deputy district attorney from somewhere down in San Mateo County, something like that--not the brightest guy in the world. He was a pretty good guy, I must say. Jim and I got along fine. Anyhow, Senator Murphy wanted this guy and so he came. But they thought that with the strike forces, it was kind of like they were going to strike terror to the heart of crime, or whatever crime was out here, they would strike terror in.

They finally got this thing going, and they started going to the grand jury, and they brought charges, that's when they brought a lot of charges against the Black Panthers and that sort of thing. They invoked the old Smith Act, which had been on the books since the mid-fifties, which hypothesized that Communism is a worldwide conspiracy and that--this was the [Joseph] McCarthy era--it must be rooted out. The strike force people were always striking, but I don't know what they were hitting, but that was their problem. They didn't bother me, and I didn't bother them.

I had been offered an opportunity to go to the University [of California at Berkeley] as a Regents Professor at Boalt [Hall School of Law]. And the more I thought about that, the more I liked the idea, so I accepted, but I got hung up with the--I think I told you I was involved in this grand jury investigation of sheriffs' deputies and all that. Jim Browning, the future U.S. attorney, didn't want to be part of it.

Hicke: Yes, I remember.

Poole: And I felt I had an obligation; I had gotten these people in there, and they came because they trusted me, and I thought it was my obligation with this grand jury, had the grand jury erred, whatever the grand jury did, but I wanted to feel that it was in good hands. I did talk to Browning, and I told him what the situation was, and I offered to hold up on it and let him review the whole thing to see if he agreed, because it was going to be his responsibility to do something with it. I must say, I was a little disappointed. I thought--I didn't think he would do it. I thought that some people who knew him-- But I thought, and he probably felt here was this terrible thing about to come about, and I'm not going to be the father of it. I waited until I brought the grand jury in and they returned the indictments, and the next day I was over on the campus.

Hicke: Okay, we'll adjourn for the rest of the afternoon, and start there next time.

Poole: I never liked Richard Nixon. I didn't respect him. It's hard to keep from exhibiting that. He was a tough guy. He was an able guy, and I was truly surprised that he engaged in the things inside the White House that he did. I couldn't imagine. Maybe presidents do that, but I couldn't imagine why he needed to, because he had been elected. He had beaten Humphrey out, and as the years went by, in 1972 he was ahead going away. Yet, he had a character defect in which he was always insecure. It was never enough.

I must tell you, when he got run out of the office--maybe I should be ashamed of it, but I wasn't--I was not unhappy a bit.

VI TRANSITIONS

[Interview 8: August 23, 1993] ##

Boalt Hall School of Law Professor: 1970

Hicke: Today, we want to start at about 1970 when you were just on your way over to Boalt Hall to become a professor. You told me how you ended up your stint as U.S. attorney, so let's start with what you did at Boalt Hall.

Poole: At Boalt Hall, the Regents' Professorship, and the regents, indeed, left it pretty much up to me what I wanted to do. What I wanted to do was to make the acquaintance of and hear discussions by these young people. So I had a couple of seminars. The Evidence professor had recently died, and so I did some lectures in his place. I didn't quite know how far I ought to be getting into actually physically preparing to do some writing. I had the feeling that, while I thought this was a great thing that was happening to me, it wasn't going to last always.

Hicke: Hadn't you taught before?

Poole: Yes. I taught five years at Golden Gate.

Hicke: I think you mentioned it, but we didn't really talk about much. What did you teach there?

Poole: The first year, I taught the criminal law classes. I, at that time, was in the District Attorney's Office. Then in the second year, they asked me if I would take the evidence classes, and I said I would, and for a while I did both classes. But I realized that was pretty hard to do. I didn't have all day to study up on these things, and I wanted to make certain that I was prepared. I felt I knew evidence. I had tried, well, I don't know how many cases I had tried as of the time that I first started at Golden

Gate. But I would say that by the time I left the District Attorney's Office, I had probably tried 120 jury trials and a lot of non-jury trials as well. What I did was, I went out and I got the case textbooks and materials that were standard at Harvard.

Hicke: Are we talking about now when you were at Boalt Hall?

Poole: I did this first at Golden Gate. These [students] were people who, at that time, were mainly folks who had jobs, and the classes were in the evening. What I told them at Golden Gate was that it was not my intention to have some kind of a secondhand teaching and learning experience here. "I'm going to give you exactly what they give to the people in the first-rate law schools around the country. You may or may not do well on the bar examination with these, but if you stay with me and you take these books, Morgan and MacGuire, and you use that, we'll go through that thing, and you and I will have a great experience on it."

When I went over to Boalt, I had seminars, as well as a couple of classes. My seminars had to deal generally with the prosecutive function, and periodically I would take a class for one of the professors. I'd get them coming in. There would be a large crowd of them that would come in.

Hicke: Sort of guest lecturing in others' classes?

Poole: Yes, but I was a professor. I did enjoy it. Someone asked me what I liked about the classes mostly. I said, "I think it was their irreverence." [Laughter] They would challenge you, even when they couldn't win, but they would challenge you. It was good.

Hicke: That was different from your own experience in law school?

Poole: It's hard for me to remember now, but I think in most of our classes there was a good bit more deference. A lot of time had elapsed between. I remember how deferential we were at Harvard with classes by Dean Landes and by Felix Frankfurter. Those people were pretty powerful, and the smart ones who figured they were going to show how bright they were would finally end up by having themselves just hanging by a noose, particularly Frankfurter. I think I told you about that, didn't I? He would call on somebody to answer a question, and three weeks later that guy's still answering the question. They did that to some extent at other schools. But in any event, I enjoyed the seminars, and I enjoyed the discussion. Because when you get into a discussion, you give them a fifteen-minute talk and then they come after you, and that's good. I liked it.

Didn't I show you that picture with Earl Warren? I was talking to Earl Warren; the Chief Justice of the United States was there.

Hicke: I remember seeing the picture.

Poole: One of the professors over there sent it to me. He found it in his files somewhere and he sent it to me. But anyhow, I took those courses, and I found that when you came to grading people, everybody thought that he or she was better than the instructor. I talked to some of the old pros over there, and I said, "I would suppose there is some tendency on the part of new people who come here to sort of grade down, on the theory that they want to show the class that they're not too smart, and 'To meet my standards you've got to do more.' That's a great temptation, I'm sure of that. But," I said, "I'll only do it to a couple of them." [Laughs] I also had some self-critiquing from some of them too. I would tell them some of my experiences in the class and what had happened and what my response was, and they wouldn't say you're wrong, but they'd get into a dialogue.

Hicke: Alternatives and that sort of thing?

Poole: Yes, and I appreciated that very much too.

Hicke: That must have been interesting.

Poole: I had an office, and I would go in there, and I was writing a lot of miscellaneous things, but I didn't know whether I wanted to really write. Deep in my heart, I knew that I was never going catch up with that fugitive SJD that I didn't get at Harvard, and so I wasn't kidding myself. I was pretty realistic about that. What I really started to work on was a manual dealing with the contact between state court prosecutors and people in the law and federal court, since I had eight and a half years of one and eight and a half years of the other. I got, I don't know, forty or fifty pages of it. The truth is I simply abandoned it.

Hicke: That's too bad.

Poole: There were a lot of distractions. I spent a lot of time talking to the students that I had, and I would have a time set with them to come to the office and talk to me. I would give them an option, if they wanted it, to pick the subject. I told them that "Your response to what has happened in class may be good, bad or indifferent, but I want you to tell me what it is, because that way you can help to teach me too." Some of them would. Some of them were very reluctant to do so, but then some of them were forthright.

I remember one student came in. I gave her a grade, and she thought that she was much better than that. She came to see me and she brought her husband. She was a young person, and she brought her husband. I told her that "If I suggested to you that it would be better if your husband weren't here, I think that would defeat whatever you had in mind in coming with him. So let's let him sit down and let him hear. You can ask some questions if you want to." So we talked about forty-five minutes. What she really wanted was to know if I wouldn't give her a higher grade. I said, "It was my impression of you that you are retentive and bright, but I also got the feeling that you're not malleable and entertain divergent points of view." She had told me that she was a third-year student, and she had made an application to one of the schools in the northwest on the coast. I told her that the grade system is an arbitrary way of trying to encompass a lot of things into a mark. It's not really possible to do that, and there are things that many of the people in the class did, which, if I seized that as the indicia, would mean either that they got high up, far down, or somewhere in the throwaways. I guess, to tell you the truth, I learned more from them than they learned from me. I would ask them a lot of questions about why they felt this way. They were anti-authority all the way.

I told you about the chap who came wearing the hat, didn't I? There was one chap--he had a hat, and he wore it in the class. Every now and then, I would see him looking at me. I guess he was saying, "Aren't you going to ask me about my hat?" I never said a word to him. So when his time came for a conference at my office, he came in and he didn't have his hat on. So we talked and talked, not about that. We talked about a number of things. He started to go, and he said, "Mr. Poole, I thought maybe you didn't like my wearing the hat in class. So I'm kind of surprised today, you didn't say anything about it, about the absence of it." I said, "In the classroom, I assumed that that's how you grew up, that you wore your hat indoors. There's nothing wrong with that. As long as your parents didn't object to it, I'm not going to." [Laughs] He walked out of my office. As he started pushing the door to, he opened it and he said, "Boo."

Hicke: He wanted you to mention it.

Poole: Yes, he really did. I was also much interested in the academic programs, the lectures, the advent on campus of some well-known or highly regarded person out of business or government or law or whatever it was, and I went to a lot of those. The year passed before I realized it. The year went, and by that time my friends down in the law office were saying, "Hey, are you going to take that second year or not?" And I said, "I doubt it, but I'm still

thinking it over." Finally, on account of a self-examination of myself, I concluded that it was very unlikely at this stage that I was going to become a plausible academician. I said to myself, "You're kidding yourself if you think you are, but why don't you just let it be what it was. You had a fine, fine experience." I was very much impressed with a lot of people on the Boalt Hall faculty over there. They were all very friendly and kind to me, and I thought to myself, I'll let them be professors and I'll read their writings and learn. There were some who were a little surprised.

Hicke: I think it's really valuable for students to have a professor who has been so involved.

Poole: They asked a lot of questions. "What does a jury do in a room when they're there?" questions like that. "How do you know what kind of arguments to make to the jury? Do you make a different argument to a jury that you think, maybe let's put it this way, may be bright and smart and a different one to those who are not?" I said, "It's hard to characterize a whole jury that way." I said, "One of the things that I think you ought to know is that--certainly this is true in the private sector and in the civil cases--lawyers don't simply go in and face a jury that they know nothing about. They have all these people who research them. They'll give you stuff like this [demonstrates] on them: you know who this person is, what his education is, how he is registered, where he works, and all this sort of thing."

Hicke: Favorite breakfast?

Poole: Yes. So I said, "When I first started trying cases, they didn't do much of that at all. It wasn't really until later on that I realized that they were doing that. So I would have police and the intelligence people run out on them what was in the--it wasn't the computers--but they would run all this stuff out on these machines."

Hicke: IBM card machines?

Poole: Yes, and get all that they could get. And I said, "I'll tell you, one of the things I learned from that was to remember not to count on what you believe the other side is necessarily going to produce. In other words, don't think that a witness who is a percipient witness is necessarily going to be produced. He's not friendly to the prosecutor, and the prosecutor will have an uphill climb if he tries to get him, but don't be certain of that."

I told them a little anecdote that I had, a true thing that happened to me when I was in the District Attorney's Office some

years ago, and that was that we had a person who had burglarized some equipment out of a working shed that was on San Francisco Beach. We were pretty sure he was the one all right. Somebody had identified him, but it wasn't a hard identification. I put in the evidence, and I didn't call his employer, because his employer had suddenly had to--at least that's what he told us--go out of town. I suspect, in retrospect, they didn't want him testifying against this fellow. But anyhow, he wasn't there, because we put the detectives on that to make sure he wasn't there, and he wasn't at home. So I said, "I wrapped up what was a pretty good case." And the defendant came in, and his only defense was, "They got it wrong, I wasn't there." I said, "Do you know, some of jurors bought that." They disagreed among themselves. They had a hung jury. So then the lawyer said, "Maybe we can work something out." I said, "After he goes through a second trial." At the second trial, I had them go out and escort the employer, the person who kept the diaries and records of all of who had worked and at what times they were at work. I had him bring those down the day before. You know, "Don't turn up absent."

Hicke: Don't leave town tonight.

Poole: Yes. On the second time, I said to the lawyer when we started the second trial, "I'm going to enjoy this, because you're going to have to put him back on and have him say exactly what he said before, and he's a liar, and you know it, and I know it."

Hicke: And that will be tough.

Poole: I said, "I can prove it now. So let's make out some kind of a deal." He said, "How about a sentence where he gets sent to San Quentin, but suspend that and make him do a year in the county jail." I said, "A thousand-dollar fine." He said, "Okay." I said, "Tell us what he did with that equipment that he stole." He said, "Oh, he didn't steal it. Let's go to trial."

Anyhow, I told some of these students, "Don't forget now, what that lawyer did was, he didn't have a defense if I'd had all my witnesses there. When they didn't have it, he just threw his case out the window, and he proceeded to have the guy get up on the stand and say "I wasn't there. It's the wrong people." Then I told them some other things that I used to do, and I told them some things about how the grand jury works, how the state grand jury works, and how the federal grand jury operates, how many of the decisions made by a grand jury are communicated down the chain to assistants, and whether they have any real independence. And I said, "For the most part, they do, because while you can tell someone what you think are the strong stress points that they

should have, only he can do it. You're not going to be sitting up arguing to the jury."

I used to go around the courts, and I would slide surreptitiously into the back row and watch and see how my people were doing when I was U.S. attorney. They would not be paying attention back there. I went into a federal courtroom, and one of my assistants was Terry Hatter, and he is now a federal judge. Remember he was the one who held that the army couldn't discharge that gay master sergeant, or whatever he was. Anyhow, I had brought Terry to San Francisco, and he was with me about, I guess, three or four years. This was early in his days, and I went to the courtroom. I was making rounds that afternoon. I would sort of slide in there and sit down. The judge saw me--Judge Oliver Carter, who is long since dead. This was a special proceeding. It was a motion to quash certain of the evidence. I think it was a narcotics case, but I don't remember too much now. Anyhow, the arresting officers were there, and they were being examined. In those old courtrooms at Seventh and Mission, they had the brass rails, the round brass rails, and one was about this high [demonstrates]--

Hicke: Three feet.

Poole: And one was about this high [demonstrates]. So the lawyers sometimes had a habit of putting their foot on one of the lower brass rails and talking in front of it, and the judges hated that, because then they had to polish the brass again. Anyhow, when I went in there Terry was halfway sitting on the upper rail, so I shifted a little bit, and there was another assistant sitting in the very back of the room next to me. His name was Bob Marder. I said, "Marder, you go up to Hatter and tell him I said to get his butt off that rail, get in front of the judge, and don't come within five feet of that rail anymore." So he went up there and told him that, and Judge Carter was looking at him like this. [demonstrates]

Hicke: Nodded and smiled.

Poole: I said, "You want to beware of things like that." In other words, when you go in there, people expect that you are representing the state or the federal government, so you have a weighty responsibility, and you can't do all the things that some others can do.

Hicke: As a U.S. attorney, or whatever?

Poole: That's right, that's right. Anyhow, Terry didn't get over that for a long time. I told some of the kids at Boalt about that.

They said, "Federal court's a whole lot stiffer than the state courts, aren't they?" I said, "It depends on what you mean by that term." They said, "They give these heavy sentences for one thing." I said, "Yes, they do, that's a fact."

I got to know, as I say, a lot of the professors and the teachers. I don't get over to Boalt very much anymore. I have gone there for moot courts.

Private Practice: Jacobs, Sills & Coblentz: 1970-1976 ##

Poole: There was another thing that was of some importance to me. I decided early in the year, very early in the year, that as much as I felt it was really a gem of an experience that I was having to be able to do this, as I told you, I didn't feel that I was going to be a great academic sometime down the line, and I was beginning to get a little pressure to come to the firm.

Hicke: Okay, now, tell me who you're talking about, just for the record.

Poole: At that time it was Jacobs, Sills & Coblentz.

Hicke: And was it a large firm?

Poole: When I first started, there were eight or nine people; there are about forty now.

Hicke: Who was talking to you?

Poole: They had planned on my coming.

Hicke: I see. You had already talked about this.

Poole: Yes. The senior partner was Tevis Jacobs, and he is dead now. The next in line was Bud Sills, and the third in line was Bill Coblentz. There were some other lawyers in there. When I made up my mind that I was not going to try to stay at Boalt, then I wanted to get back into the world of trying cases and being a litigation lawyer. So I came to the office, and when I got there, they had stuff for me.

Hicke: Yes. What did you start out doing? Five things at once, probably.

Poole: The things that I did at first were cases that were already in the firm. I worked on a number of them. Then I began to get cases of

people who came because I was there. It was a very congenial group they had there, and I liked the people. It was a lot of hard work, but it was very pleasant, and I got to do things, because of the nature of their practice, that I probably wouldn't have had otherwise--not for a long, long time.

Hicke: Can you give me an example?

Poole: Well, there are a lot of wealthy people in the San Francisco area, and they have a lot of problems, and I, at one time or the other, represented a number of them in different things that they were involved in--saved some of them some money, saved some of them from going wrong. Theirs was a business practice. Only I, at the time, really ever tried a tax case when I was there. They got some people then who were able to do that, but they had not done it before. One of the things that I really and truly enjoyed was that I didn't have to look at my wallet before I went out anymore.

Hicke: Yes, that's always nice.

Poole: I didn't have to do that anymore. I did a lot of traveling. They had a lot of people who had been settled in northern California for a long time, and they used this firm as their lawyers, and I worked on a lot of the things that they had. I can name some of them. There was a--it still may be there, I'm not sure--tannery down at Santa Cruz, and the owners were a family who had had this tannery for seventy years. They did high-quality leather products, but it was expensive stuff.

In the seventies, they felt that they needed to strengthen their financial base. They went to some advisers who suggested that the way to do that would be to spread out with a strong parent company and let that company take them in as a subsidiary and give them a higher financial base. They were looking for a company that had extensive work in leather products. They advised us that they were going to sell out to this big shoe company--the tannery interest. They thought the terms were favorable, but we had some reservations about it. There was some discussion with some of the experts along that line who were ambivalent about it. They had to make a decision, so they decided to make the move.

Nine or ten months later, the parent company that they had sold out to declared bankruptcy. On their behalf, we talked to counsel in New York who had served several of the persons who had bought into the company. They suggested that what we ought to do is initiate in state court back in California a forfeiture action--a fraud action--and rescind. Now they were in bankruptcy, and there was an automatic stay on the bankruptcy. We came on back and we talked about it. I didn't think it was a great idea, but

they were desperate and they wanted something like that. It took me about ten days, and I went back to court and filed papers to rescind this automatic forfeiture, fraud, breach of contract, and all that sort of thing. We got an order signed by a judge down there in Santa Cruz County. Then the hell broke out.

When the bankruptcy judge heard about this, he went storming into the chambers of the district judge. So what happened was the district judge said, "Who did this thing?" He [bankruptcy judge] said, "The principal lawyer named Poole." The district judge said, "Who the hell is he?" He said, "He's a California lawyer." The judge, "Well," he said, "you file the papers there, and I'll issue an order, and I'll make him disgorge over that." So he did, he signed these orders, and I told our client--here's what happened. I had told our client, "Stay away from New York, because they don't have jurisdiction over you right now. But if you go up there to New York, and they can catch you in the Southern District of New York, there will be a process on you." Well, he went up there to talk to the lawyers in that big firm that I told you about. The word got out somehow where he was and where he was staying, and he got served with process, and the judge then ordered him to do all this disgorging. For a long time, I had the transcripts. The judge would say, "Who's this fellow Poole, I mean where is he?" [Laughs] I wasn't surprised that it happened. Anyhow, I had to go back into the state court and revest all this stuff. It was fun, in a way.

Hicke: How did it all turn out?

Poole: They bought them out. They bought their way out, and they put up some hard cash and, of course, that drained them for a while, but they got their tannery back.

Hicke: Oh, good,

Poole: Wiser and poorer. I don't understand the tax bill. That's been a long time ago. I guess that probably was 1973, maybe '74. I don't know.

Appointment to the Federal Bench, 1976

Poole: We had a lot of interesting work, and I very much enjoyed it, so much so that when the time came-- Let me go back a little bit. During the period of time, 1971 or '72 and 1973 or '74, California's senatorial component shifted from what it had been-- one Republican and one Democrat--and it shifted to two Democrats--

Alan Cranston and John Tunney, son of the famous fighter, Jack Tunney. That would be before your time. Anyhow, I told you, you know I had been nominated twice by Lyndon Johnson.

Hicke: And that appointment was blocked.

Poole: Yes. When I went over with this firm, I was having the time of my life. I enjoyed what I was doing, and I was making more money than judges made, so I didn't have any problem with them. But twice, I think the first time was when [William] Bill Orrick--they went to Richard Kleindienst, who was Nixon's deputy attorney general, and tried to get him to agree to my appointment as a district judge. They thought I had unfairly been denied it before, and Kleindienst said, "John Mitchell would have to sign a commission for me." I said, "I think that's right. If I were in his place, I'd feel exactly the same way."

So that was one time. Then another time I was at a meeting in New York. I became a joiner of a lot of organizations.

Hicke: Okay, we want to get into that a little bit.

Poole: I was at a meeting of the Urban League in New York. I got this conference call on the phone. It was Cranston and Tunney, and they had talked to whoever succeeded Kleindeinst, but Nixon was still the president, and the comment was just the same. I thanked them and told them that I appreciated all their efforts, and I realized they were true friends. But I thought they were busy people, they ought to go and get somebody who was viable, who could be appointed. "You've done for me all that anyone could ask and more, and I just want you to know that I'm very grateful for it, but get somebody that you can get in there; and that's important." So that's when Charlie Renfrew was appointed. I wasn't paying attention to whether there were vacancies on the district court or not, but Nixon left in disgrace, and Gerald Ford became the president. They didn't say anything to me about it, nobody did. But Tunney and Cranston went to Judge Levi, who was the attorney general for the president who followed Nixon.

Hicke: Gerald Ford.

Poole: Ford. I had seen Ford when I was a freshman at Michigan. He was the captain of the football team. To me, this guy seemed about thirty feet tall. I had met him, but he wouldn't have known me from a load of hay. Other than that, I only met him once in my life, and that was when I went back to Washington after he nominated me. When that happened--

Hicke: When he became president?

Poole: He became president in 1974, when Nixon went out crying down the way into the helicopter. Someone said, "You don't seem like you're very sorry." I said, "You know, I think I could stick a spear in the old bastard." [Laughter] I have learned to be just as firm in my desires as anybody else.

Hicke: It didn't seem to have deterred him.

Poole: He's been rejuvenated now. I was involved in a tax case then. I may have told you about it.

Hicke: With who?

Poole: It was a tax case of a southern California real estate broker who was in the habit of buying a lot of housing--that C-something schedule housing, which is intended for moderate income people. He had thirty salesmen, and he had them digging up people, and these people were buying houses. He would fix them up and would sell them. HUD [Housing and Urban Development] got the word, and this fellow hired a high-powered lawyer down there in Beverly Hills. This lawyer was steering him through all the stuff.

What he did was, the lawyer got an investigator from someplace, and he had this investigator go and talk to these people who had bought the houses and got them almost, maybe entirely without exception, to say that they didn't deal with the owner of the real estate office at all; they dealt with the salesman, they didn't know anything about him, which was a blatant lie. Anyhow, the government indicted this fellow and charged him with failure to pay income taxes amounting to \$765,000. That wasn't the income out of this. That was the amount of taxes that they had.

This lawyer had called me a couple of days earlier and had introduced himself. I had heard his name somewhere, but I didn't know him. So I made an appointment, and he brought the client up. The more they told me about the story--sitting in there looking out of the windows at the Bank of America--and the more they told me about this story, the more I could see--I said to them, finally--I think the client went to the bathroom or something--and he [the lawyer] and I sat there. I said, "Has it occurred to you that you may very well be a target? You've got the FBI working for the housing people, and you've got all those people on it, and they're bound to know that this is your brainchild. Because when the going gets tough, you don't have any friends." I think I scared the hell out of him, as a matter of fact. He offered to withdraw and let me have it. I said, "No, wait a minute. We're not in the business of taking business away from other lawyers. That's not what I'm getting at at all. What I'm trying get at is

that you may be--and you know more about it than I do--but you may be in some difficulty because clients have a habit of doing a little singing for their supper. He has this heavy tax burden, and they're also going to indict him for fraud on the government. I'm sure of that." I said, "I was U.S. attorney for eight and a half years, and that's exactly what I would do. So I think you can expect that."

He got a little concerned then. He said, "Let me talk to him." So he talked to the client and they came back in. The client said, "I think you are right, Mr. Poole. We may not be able to work a good defense." I can't remember this fellow's name now.

I hadn't decided whether I was going to take it or not. They left me with the understanding that if I would take it, the lawyer was going to back out. He was going to mend his own fences some way, I guess. Coblentz had tried to get me several times during this two and a half or so hour conversation that I'd had with these people. He called me, and he opened the door of the office one time, and then had said, "How about having lunch?" I said, "Okay."

I buzzed him to tell him that it was lunch time, and I wanted to talk to him about this. I said, "The guy has asked me to take him. Do you think Tevis," he was the senior, "do you think Tevis would be unhappy if I did it?" He said, "No, no, we don't take them, just because nobody has any experience here. So there's no reason why you couldn't do that." What he wanted to tell me, however, was--all those interruptions--that he'd gotten a call from John Tunney, and John Tunney told him that they had talked to Attorney General Levi, who was Ford's attorney general, and to the deputy attorney general about--there was a vacancy on the district court--about my being appointed. They had run that by the attorney general, and the attorney general had said, "Well, okay. If the ABA okays him, why not. It will give Mr. Ford a much broader base." It didn't give him a much broader base. Anyhow, so that's how I knew about it. I had no idea anybody was doing anything.

As of that time, I really had no problems. I was having the time of my life. I was enjoying it. I wasn't getting rich, I don't mean that. But I was doing very well. Fees were good fees. By that time, also, I had become a director of Levi Strauss and Company. Didn't I tell you that before?

Hicke: I guess, again, you mentioned it, but some of these things we talked about off tape.

Poole: Yes, I was a director of Levi Strauss for, I guess, it would have been for about four years. And I had a couple of other directorships and membership on a lot of boards and things.

Hicke: Maybe we should sort of lump those altogether and talk about them in one fell swoop.

Poole: A judge has to get out of all those things.

Hicke: Oh, that's right, as well as giving up your pay.

Poole: I was torn between the conflict. Anyhow I did finally do it. My wife said, "Now look me in the eye and tell me you don't want to do it." We were doing such things as she and I were going to go down to Carnival.

Hicke: In Rio?

Poole: In Rio, yes. I had never been able to do that sort of thing before. It came suddenly. Judge Sam Conti was supposed to start a three-week trial in his court. This would have been in about February of 19--

Hicke: Seventy-six?

Poole: Seventy-six, yes. There was supposed to be a case in Judge Conti's court that was going to take about three weeks. I got a telephone call from his court deputy that there had been some kind of a snafu and this case had come to a temporary halt, and they would get back to it in a few days. They now felt it would be three weeks before I could expect to come back in, and that wasn't terribly firm. Charlotte and I had talked about going down to Carnival, and I said, "Let's do it. I've got these three weeks." And damned if she didn't go and get the people--I still wanted to look at my navel a little while longer.

Hicke: She went right down to the travel agent.

Poole: She went to the travel agent, we had a hotel room, and flights on the damn thing. And then this thing comes along about the judgeship. I said to her, and she was a very sensible person, she trusted me on this. I said, "Look, we go down to Rio, we stay for six days," I think it was, "and we come back. We've never seen the country and this is on short notice. "We got maybe the last hotel room, maybe the last plane seat, whatever it was.

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Hicke: You were just about to tell her--

Poole: I'd had a call from Walter Haas. This was the next day, I think. I hadn't said a word to him about this call from Tunney and Cranston. I had gone to see him. I think it had something to do with the export regulations. Levi Strauss had approximately twenty-five subsidiaries. He had just come back from the Kona Village Resort over in Hawaii. He had thought I was going to go down to Rio, and I had called him down there and told him that I was not going to Rio. He called me and I told him that we had canceled that. She had agreed to cancel it because there was too much going on. And he said, "Why don't you go to the Kona Village Resort?" He had just come back two days earlier. It was very brand new then, and they had these old grass-thatched roof cottages--native cottages--but inside they weren't old fashioned. They were absolutely great. The cottages were built out over the lake--

Hicke: Oh, they hung out over the ocean?

Poole: Over the ocean, and there were these big reefs, and they were illuminated, so at night you could see all these beautiful fish swimming around.

Hicke: So you did that?

Poole: Oh, yes. So he said. "Why don't you go over there? It's not as far, but you'll like it." So we made reservations for it. Then I went up to see Bill Orrick and Charlie Renfrew, because I hadn't said any word to her, and, in my mind, I hadn't really accepted anything because I hadn't talked to anybody but Cranston and Tunney. I told them I was going over to Kona and could I talk to them about it next week when I came back. They said, "Oh, sure." I said to Charlie, "I don't know what the hell I'm going to tell Charlotte, because I'm ambivalent about it. I mean, I want it and I don't want it. If I'd had about ten more years doing the kind of work I'm doing now, maybe I'd feel more like it. But I didn't have those ten years, and I'm just damned greedy." He said, "I'll tell you what you do. You go down to--there's a liquor store down on Sutter Street now; it used to be on Montgomery. It's Williams Liquors, fine liquors and wines they have down there, up near Kearny. You go down there and get a bottle of fine wine, go down to I. Magnin in the cellar they have down there and get some French cheese that she likes, get her at the right time over there, sit her down, and then you tell her about it."

Hicke: And tell her that's the last time you'll be able to afford any of that kind of wine!

Poole: So I did. I got the bottle of wine and the cheese, and we went over there. And do you know, we'd been there four days and I

hadn't said a damn word. I didn't know how to. She was saying how great this is. She had made some friends. They were watching the whales come by, the schools for whales, and that sort of thing.

Hicke: It was getting harder and harder.

Poole: Yes. "Isn't this a beautiful sunset, isn't that great? Oh, I love it." So when it came to be Thursday, they were having the barbecue of the pig, and they put the pig in the pit covered over with ti leaves and that sort of stuff, and then they barbecue it down there. So as we were going in--there's a little ceremony they have. As we were going in to watch the ceremony of opening of the amu--there were no phones in the cottages, there were phones in the office--there was a fellow waiting at the entrance to this place, and he said, "Mr. Poole." I said, "Yes." He said, "I have a message for you from Judge Renfrew." I said, "Oh." And Charlotte said, "Charlie Renfrew?" I said, "I guess so." She said, "What does he want?" "I haven't the faintest idea." I said, "We had talked about some receiverships and maybe that's what he's calling about, I don't know. I can't say so, but I'll give him a call." So she said, "You're not supposed to be doing business over here, you know." So she went with these friends to watch the whales, I went up on a lava bluff by myself and fished and I caught--what the hell did they call it? It's the only time I caught a fish of any distinction out there. I'll think about it. It was a multi-colored, it was a beautiful multi-colored fish. So I came back. I went into the dining room of the place and said to the chef, "These things won't keep, are they good eating?" He said, "Absolutely special." I said, "Can you cook it for me?" He said, "Sure. Have it for lunch tomorrow." So I said, "Okay."

Postscript. What happened to the lunch tomorrow was that somebody came on the early shift and served it to someone else, and I never got a damned taste of it. I went down to the cottage, and Charlotte had been reading and she said, "What did Charlie Renfrew want?" I said, "You'd better sit down." So she sat down. No, I guess I opened this wine first, and she said, "Where'd you get that?" I said, "I brought it with us." She said, "What did Charlie want?" I opened some wine and some of the Roquefort cheese that I brought in dry ice. Then I told her, and she didn't say very much, and I said, "I don't know what to do." She said, "The hell you don't." [Laughter] She said, "After all these years, you've never gotten over what happened when Nixon withdrew your nomination and all that, and the people who were ringing bells and sending congratulations, and you had to eat everyone of them." I said, "I really don't know." We had some talk about it.

Hicke: What had Charlie Renfrew said when he called?

Poole: Oh, what he had said was he had talked to Deputy Attorney General Tyler about whether there would be any problem. And Tyler said, "If he gets the ABA approval, no, no." I got a "Very Well Qualified" from the ABA eventually.

In a way, it was sort of a division. Of course, she had to know, and I should have told her right off the bat. We talked about it up and down, and I talked to everybody. Of course, Coblentz said, "You don't have any choice. What do you mean? What are you thinking about?" I had to resign my directorship with Levi Strauss. I hated to do that. It's a great company. They had twenty-five or twenty-six subsidiaries all over the world. It was just marvelous talking to those people from those different places. But that happened over four years after I left Boalt.

Now to look back on it, of course, times have changed now, but I did the right thing. I didn't have any difficulty on confirmation either. I got from Strom Thurmond, who had made the motion that, in effect--I think I told you about Warren Christopher the day I went to the airport and he had called, didn't I? That had been several years earlier.

The Republicans on the committee, on the Judiciary Committee, had held back all these names--Matt Byrne, my name, David Bress, Barefoot Sanders. The Democrats on the committee thought this was not acceptable. So they ganged up on them, and they passed a resolution to start up a hearing right away for the three of us, and Strom Thurmond--Warren Christopher told me they had that rule up there that any judge can put a matter over for seven days. So Strom Thurmond made that motion and automatically put it over for seven days. This was on a Tuesday or Wednesday I was talking with him. I said, "But they're adjourning on Friday." He said, "Yes, I know. The nominations will expire." That was in January, 1969. Nixon had pulled them back. When I go back now from January, 1969, to early spring or late winter 1976, that was quite a gap in there.

I did have these feelings. I felt that, for many reasons, symbolically there was almost no escape for me. Nobody would understand what I meant if I said I don't want to do it.

Hicke: I know though, from having written the history of the Federal Judges Association, that during the seventies some people did turn down the judgeships because they were in such poor shape.

Poole: I didn't take the oath of office until, I think, October. That incident where I had gotten the phone calls was, I'm sure, in early February. My commission was dated in July, 1976. I didn't take the oath until October. The first paycheck I got in a brown envelope, and so I opened it up, and I can't remember what it was. I was thinking--My business records were from the Bank of America Building where the firm was, and for a while I was still a part of the company fund that they had. I had to resign after I took the oath. And I couldn't think what this [paycheck] was, so I went up to Judge Peckham. His office was next to mine, and I said, "Bob, how often do you get paid around here?" He said, "Oh, once a month." I said, "Do you mean this is it? This is it?" He said, "Wait a minute now, you didn't take the oath until about the sixth of the month." I said, "So this is it. My God, I can't believe this."

Hicke: Ouch.

Poole: He said, "What did you think it was?" I said, "I know I have a refund. I didn't think it was this much, but it's almost as much as this, and that's just a small refund." Anyhow, it took a little getting used to, but you do.

Hicke: Let me go back to February or whenever you made the decision. What were some of the reactions that you got from your friends and colleagues?

Poole: Oh, congratulations. I didn't have an enemy in the world it seemed. We had some incidents. There was some effort made to sidetrack. Eventually President Ford had agreed to it. But in 1976, he was running for the full term, and the Republican primary was to be held, I think it was in June, and the Republican fathers were a little bit concerned that in sending my nomination up, Ford might--his opposition was Ronald Reagan--that Ford might lose some ground among true believers. I heard about this because I got a call from John Tunney's secretary who said the White House sent over three names. I was the fourth one, but they didn't send mine over. Tunney's chief of staff really went after them, and so did Ted Kennedy's people. They said, "You know how it is with the Republican Primary out there. I think he just didn't want to do it at that time, but it will come over." They said, "You bet you it's going over. Nobody's going to move until it gets over there." Two nominations were announced just before the Republican primary, and I was announced after the primary. I didn't give a damn about that. It didn't bother me. It's kind of interesting.

I went up and I found out all about things that they did. I said, "Is this what you guys have been doing all the time, back

here where you were? You've been doing acts of blackmail and all this?"

Hicke: Who are you talking about?

Poole: The judges. I was telling the judges.

Hicke: At the district court?

Poole: At the district court, yes. But I knew them all pretty well.

Hicke: Judge Renfrew was pretty happy no doubt.

Poole: Oh, yes, Renfrew was. So was Orrick and Bob Peckham.

Patricia Hearst Case

Hicke: And you took Oliver Carter's spot?

Poole: Yes, I succeeded Oliver Carter. He had died before he had finished the sentencing of Patricia Hearst.

Hicke: I wanted to ask you about that. I'm glad you mentioned it. So they asked you take on this case?

Poole: Let me put it this way. From the beginning there had been some botching up of Patricia's case. She was hostile to her parents. They were sending notes and tapes to the press referring to them as "the Pig Hearsts," and things of that nature. There was a lot of anxiety by the family about where she was. Vincent Hallinan came up with a claim that he had a client who was over in San Quentin whom they called--I've forgotten exactly what his name was, but he called him Death Row Joe, something like that. In those days they were not--'72, '76--I think the Supreme Court had stopped the executions at that time.

Hicke: Yes, I think that's right.

Poole: Vincent claimed that he, through this client of his, could probably get some information about where Patricia was likely to be, and the Hearsts were very, very nervous. Then Vince called me one day. Oh, let me go back. When the detectives arrested Patricia, Vincent had been talking to the Hearsts a lot. He had asked us to help him on some specific things, and I had gone over to San Quentin to talk to several prisoners to see what I could find out. When the FBI arrested Patricia, they put her in a cell

and they allowed one of her girlhood friends--I've forgotten her name now, but she was related to the founders of the big bank on Market Street that's shut up now, the police headquarters.

This little girl, she was about Patricia's age, they were young friends. They all lived down in the Atherton area. She was allowed to come to the cell, and they talked and talked and giggled and everything. They didn't know that the sheriff's office had a bug in the cell. So a lot of the defense that Patricia Hearst was putting out, which was the natural one, I guess, what could she do. She was in their control, but a lot of that was dissipated by the fund raising that went on at that cell that was being recorded. I took Bill Coblentz over to the prison too one day. He couldn't believe what he was seeing. When she was arrested, they couldn't find any of the lawyers around who had been at all involved in this thing. Vincent Hallinan was somewhere out of the state. Vincent Hallinan had at one time called me and suggested that he, I, and Jim McGinnis form a team to defend Patricia Hearst. I said, "Vince, I've told Randy that I don't believe anybody can provide a lawyer for her except somebody she wants to accept. She's been out there all this time thinking we're a bunch of old sticks in the mud and that kind of thing. She's not going to take any advice like that. I don't think so." I had never seen her in my life at that time. He tried that a couple of times, and then he came up and he said they got a lawyer from New Jersey who had a glamorous record of taking on impossible cases and winning some of them and getting clobbered on some of them. It happens to all lawyers eventually.

Hicke: I suppose it does.

Poole: When the FBI arrested her and they took her up to the quarters at the Federal Building, Vincent was in Hawaii, Randolph Hearst was in New York attending a board meeting of the Hearst Corporation, Mrs. Hearst was in Los Angeles. She was a regent of the University of California, and she was at a regents' meeting. I was in a deposition, and we had a tough time on this deposition, and I had given instructions: don't put phone calls in to me. I wasn't dreaming of this. So, they didn't put the call in to me for about an hour and a half. Then someone came down and told me about it, so we adjourned this thing there, and I went up and I called Randy's personal secretary. That's who the call was from, and she said Mr. Hearst asked if I could go up to the Federal Building and represent her. I said, "I'll go up there, but I'm not sure that she wants me to represent her. My guess would be she doesn't, but I'll go up and see her."

When I got to the Federal Building, it was utterly jammed--the press people with all of their cameras and all that. It was just

a mess. By the time I got there, she had already been arraigned, so they put her back in the cell, and then they transferred her back down to San Mateo County.

Randolph Hearst did speak to me again about that. He wanted to bring in this guy, a glamorous guy--never failed to touch up his memoirs on himself. I can't remember [his name] now, but Randolph said that he would take this fellow, and he did a rotten job for her. I don't know that anybody else could have gotten a better result, but he did a rotten one. He had his own private plane that he piloted, and he was busy flying back and forth. He was giving a seminar in Reno, and he was flying back from the San Francisco airport to the seminar. In any event, she got convicted, and she was sentenced. She was convicted in the courtroom of Judge Oliver Carter by a jury. Judge Carter, while they were waiting to pass judgment and that sort of thing, Judge Carter died, and that was the vacancy that he had left over at the district court.

Ollie and I were good friends. I had known him a long time. He had been active in Democratic politics, and then had become a state senator. When I had been in the governor's office, I had seen a lot of him.

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Poole: He was a fine spirit and he was well liked by people, a typical forest-country, back-country person. His father, Jesse, had been a justice of the California Supreme Court. So though they were from Shasta County and a rural area, they weren't rural bumpkins at all.

Hicke: Did you inherit the Hearst case?

Poole: No, no. As I say, I'm trying to think of this fellow's name. He was from New Jersey. No I did not have the case. I never went in the courtroom when Patty Hearst was there. She was convicted, and eventually, you may remember, she was given a commutation of sentence. I think that was Jimmy Carter.

Hicke: Maybe we're at a good stopping point here.

Poole: If there's nothing else you want to ask me about.

Hicke: Is there something else to say about your time with Coblenz?

Poole: He and I were old friends. We had been friends since he got out of law school, when I was first in the District Attorney's Office. He came down to the office looking for a job. Tom Lynch, the

then-district attorney, because Pat had been elected attorney general, Tom Lynch, as I accused him one time--he was prone to dig up old Irish buddies, not necessarily old but Irish buddies, so they could tell these stories in an unintelligible language. [Laughter] He was a little bit uncomfortable with a lot of Ivy League folks. He interviewed Bill, and there was Tom Lynch, Frances Mayor, Norman Elkington, and myself. Bill had been with the Ford Foundation about two years, but he wanted to come back home. I walked downstairs with him. We took the elevator downstairs and I walked down the street with him. He said, "Do you think Tom is really considering me?" I said, "I doubt it, Bill, I doubt it." I said, "Why don't you go up and see Pat Brown, who has recently been elected attorney general of California? He's got some spots up there." Coblentz did, and Pat did take him on. That would have been probably 1951. He didn't stay; he became a consultant to the attorney general, but he joined this firm of Tevis, Jacobs and Bud Sills, and then they had grown up with some more people. He and I, as I say, had been good friends. When I first went to Sacramento in the governor's office, we shared an apartment.

Appointment to the Ninth Circuit Court of Appeals

Poole: I didn't tell you this, but when Carter--now this is almost five years later--Jimmy Carter becomes president, and he set up a system of commissions, like he had one for the Northern Ninth Circuit, one for the Southern Ninth Circuit, and he asked very prominent, well-known people to be members of the commission. They were out on a talent search for people to be supported as federal judges, both district judges and court of appeals judges. People were breaking their necks and leaning over backwards to get called by this commission. By that time, I had my own parochial feeling about the district court. I said, "I'm damned tired of moving around from one thing to the other. I don't want to be a circuit judge." I used to explain to people that our function as district judges was to try the cases and get a solution to them. The function of the court of appeals was to reverse all of that. [Laughter]

Charlotte called Coblentz. I was in my chambers up in the Federal Building, and the time for submitting these applications was drawing to a close. I think they had to be received--I think it was the next day. So without telling me a word, she had him come up to my chambers. He brought a copy of the application with him, and we talked about it. He said, "I'm supposed to call her if you don't behave yourself." I said, "I'll get her on the phone

for you." She said, "Are we going to go through this again?" [Laughter] I said, "No, I'm not going to go through it again." She said, "You know what I mean."

She had talked to me about it, and she had learned through Judge Choy--he's a Hawaii judge, Herbert Choy. I guess that's Chinese. Anyhow, Charlotte and Mrs. Choy had become pretty good friends. So we were over on the Ninth Circuit; they had the Judicial Conference at--I think must have been at Kauai. She and Mrs. Choy had gotten to chatting, and she asked her, "Are you sitting next week?" I was supposed to sit the next week back in San Francisco, and Mrs. Choy said, "No, Herbert sat there about three weeks ago, and he won't be going back right away." This was in June. "He'll be off in July and probably off in August, and he'll probably take an assignment in September." So Charlotte said, "You mean you have those times when he's not sitting?" She said, "Oh, yes, oh, yes, it depends on the schedule. The beauty about it is the computers give you the schedule for a year in advance, and you know what you're going to do, and you can't do that in the district court." She said, "I want to talk to you." [Laughter]

We got into all that hassle, and as soon as she flew back, she said, "Putting it to you honestly, you've always expended a great deal of energy in your trials, like you did when you were prosecuting cases, and it's about time that you began to think of somebody other than yourself." I said, "I am thinking of people. I'm thinking about you, for example. You wouldn't want me hanging around the house a lot, would you?" [Laughter] She said, "No, but I could put you to work."

So she talked about it, and I'd just sit there, "umhm, umhm." A month and a half later, one afternoon Coblentz pops up in my chambers, and he has a copy of this application. He said, "You've got to fill it out now, I'm telling you. Your wife is very, very unhappy, she really wants to get a chance to see you more." I said, "I see her every night." You cannot predict when you're going to be preoccupied the way you can in the court of appeals. I could see the logic of that. By that time, we were putting on some years, and she wanted to do some things that were not compatible with having a jury that's going to last, they say, five days, and two weeks later you're still getting the opening statements or something. So Coblentz came up and he brought the papers, and I said, "How are you going to get it there tomorrow?" He said, "We are going to take this over to the post office and it's going to go by next day mail." So, he did, he sent it.

Eventually they came up and interviewed me, and I was one of those recommended. I was confirmed.

Appointment of Rose Bird to California Supreme Court

Poole: I don't know whether I told you about my eye surgery, did I?

Hicke: No.

Poole: I don't know whether it has anything to do with anything, but it did happen in 1977. I had an injury to the eye in 1977, and I remember the day that it was. It was the day that Governor Jerry Brown announced that he was going to appoint Rose Bird as the Chief Justice of California. I thought it was a mistake when he did it. She is a bright woman. She is exceptionally bright, but she is a person with a whip in her hand. She had been one of the three department administrative heads in Sacramento, and she was very hard to get along with. I wasn't surprised that he selected a woman. That's what Jerry wanted to do. She had never had any experience as a judicial person. I said, "I guess he's done what he wants to do. He wants to put an articulate, vocal person on the Court, but he's going to have to pay for it." And he did, and they never forgave her. The old-timers never forgave her, and she was always a lightning rod all the while. I was sorry about that.

There were a number of names, I am told, of people who would have drawn applause. At least they would not have drawn what she drew. It was almost as if the bar was going haywire when she came on there. On the death penalty cases, she was almost as consistent in reversing death penalty cases as [William] Rehnquist, back in Washington, is in affirming them. Of course, that gave a lot of the people who were sexist and, what do you call it, "woman-phobes," and all that a chance to make public their feelings without giving their true basis of animus. I didn't think she was going to be recalled though. Joe Grodon, Cruz Reynoso--and I almost couldn't believe it.

Hicke: You know what I think, if I could just interrupt you. You started to tell me about your eye accident, but what I'd like to do is put off until next time the things that happened after you were appointed your federal judgeship.

Poole: Okay.

Hicke: We really haven't talked about that period of time at all.

Poole: I'll tell you one thing, I had to resign all of those organizations I belonged to.

Hicke: Next time we want to discuss your organizations that you had to resign and your federal judgeship, and that included your eye accident and all of that. I don't want to get too far ahead of the story before we do all that.

VII COMMUNITY ACTIVITIES AND ORGANIZATIONS

[Interview 9: September 9, 1993] ##

Lowell High School Innovations

Hicke: I'd like to start today with more on the 1970s; please tell me about the things that you were doing other than practicing law--your professional and community activities.

Poole: In the early sixties I had become quite interested in the structuring of the public schools in this area. First of all, there was the concern about the racial composition of many of the schools. In addition to the problems of racial admixture, there were also the problems of excellence of the schools, or lack of it. Various superintendents of the public education, both in Sacramento and in this area, had some ideas about it. They came from political challenges to schools like Lowell.

Hicke: Lowell High School?

Poole: Yes. Lowell had always been a school that was San Francisco's sort of pride of academic excellence and that sort of thing. A lot of people thought, That's all right to have some of that, but we ought to be democratic about this. I guess the fact is that if you are going to be democratic in the sense that you're not going to let people be turned away because they don't meet the educational standards or excellence, then you have a problem. It's very hard to insist on the one and then not have that one become like all the rest of the schools. So the questions were really whether or not, in a democracy, there was still room for schools like Lowell. A lot of us thought that there were. It wasn't easy to articulate this.

The Board of Education was primarily staunchly in favor of the Lowell concept, even though they were accused of being snobs and

of making it impossible to share educational benefits with groups of people who, by reason of residence or race, prior education, and so forth, very badly needed it. I had a kind of sneaking feeling that a lot of those kids didn't so much need that as they needed some basic discipline, which you have to have in order to comprehend, to get along, and to profit by the kind of training they had at Lowell. But there was also the idea that it didn't have to be 100 percent or nothing. The problems that we had were really how do you bring in some of these components of kids who may not have the grade structure that was regarded as minimal at Lowell? But how do you bring them in without overwhelming Lowell either?

There was a group of parents who had moved into that area and they wanted of Lowell an area school, or wanted to make it like 60 percent an area school. The educators, whom I believed knew what they were talking about, said that you simply couldn't do it on that basis. So then the question was, how do you know if you've never tried? They then tried it. It wasn't perfect, but it didn't turn out to be what they feared it would be, and Lowell gradually opened up to more kids, but basically it remained the kind of school that it had been. What really happened there was a lot of the kids, who somewhere else might not have risen to these heights of accomplishment, did very, very well, because it works both ways. You do as your peers do.

Hicke: Sure, they were stimulated.

Poole: That's correct, and at the same time, Lowell was doing well--they always did well--athletically. You couldn't say these were frail, anemic kids. There were some pretty big guys there. That was one of the things that I spent some time in. We enlisted the aid of the educational people in the national office of the NAACP, and they were interested in it and gave us a lot of help and support. That helped both sets of people. They could say, "You see, it wasn't so bad when you brought these kids in." And it wasn't. For a while, it was kind of touch and go, and people would say to me, "In the sixties you were the U.S. attorney; what's your interest in it?" I said, "I guess my interest in it is that I'm a father, and I was that before I became the U.S. attorney, [laughter] so I'm interested, not only in my kids, but yours and some of the others too."

Hicke: Was Charlotte involved in this also?

Poole: She wasn't in that aspect of it. These were all meetings of the San Francisco Board of Education. We made suggestions, we made presentations to them, we brought in educators, and we championed them when we thought the board was correct. There were times when

you had to fight down motions and things that were coming up. People had all kinds of terrible ideas. I remember at one of the meetings of the board, I was sitting there, and I think the person next to me was one of the people who came out from New York. Her name was June Shagaloff, and she was educational advisor to the national office of the NAACP. She came out several times because they were interested in this, because there weren't too many of these kinds of experiments going on in the schools. The position that the NAACP took was that it's very important to have schools of excellence to which children can repair at times. I thought that was a pretty forward step. Of course, they got criticized a lot, saying you're going contrary to the best interests of your race. You got all that, but they kept it up. That was one thing.

Hicke: And a successful ending, I take it, to that project?

Poole: Yes.

Civil Rights Actions in San Francisco Employment Practices

Poole: There were in the sixties also efforts to do something about San Francisco's rigid employment structure. When I first came to San Francisco, you could walk from Haight Street all the way down to the Embarcadero, and the only nonwhite that you would see would be people who were in custodial and janitorial positions. At that time, to the best of my knowledge, there wasn't a single black person in any of the department stores. They simply weren't there. Every now and then you would find they would have somebody; the Emporium would change its displays in the windows, and you would have a couple of window design people, and there might be one black woman, something like that, but she was mainly holding a cloth for them. It was that sort of thing. They simply didn't hire them. To my great surprise when we got to this city, one of the few persons who was rather frequently the subject of comment was one of the characters of San Francisco--I don't mean that as invidious term, but as a person who was kind of a patron and was a standard maker.

Hicke: Who was this?

Poole: His name was Joseph--I don't remember his name. But they referred to him always as Joe Shreve. He was the doorman at Shreve's. They said, If you're going to have a reception at your home and you want somebody to take care of the cars and all that, you had to get Joe Shreve. He would be the doorman. He would wear his

gloves and be the doorman and make sure that everything went off right. He knew all the protocol and people, and he was frequently in Herb Caen's column.

After the initial period of the sit-ins took place in the South in the early sixties, it sort of spread like wildfire.

Hicke: The civil rights movement?

Poole: Yes. There came demands that the stores and establishments hire some people other than whites. I can remember Gene McAteer, who was the owner of McAteer's Restaurant out at Fisherman's Wharf, sitting down with me and a couple of other people and explaining to me that no one who ever applied to be a waiter at McAteer's Fisherman's Wharf Restaurant was used to this kind of service. They had worked in the restaurants in New Orleans and in the South traditionally. I said to him one time, "That's utter nonsense, Gene, that's utter nonsense." I got to know Gene pretty well. "You're blind." It took a long time for him to see that. Fisherman's Wharf--in those days, if you went out to have dinner or lunch, and if you were a black person, if the maitre d', whoever it was, knew you, he would get you seated quickly and make it clear that you spoke English and that you ate with your knife and fork and not your hands. But if he was not there and they had a substitute, you could tell he was going to take you to the last table in the place. That's the way Fisherman's Wharf was. No first class hotel in San Francisco would accommodate black guests until Ben Swig opened the Fairmont. Ben came from Boston, and he was proud of having been there. In fact, he would wear it out telling you about it. But it was true, the Fairmont was the first of the large hotels that broke that up.

I remember when I was--what was the year, let me see; it would have been 1949--I think it was '48 or '49. There was a traveling theatrical group, and they had a play that was called "Deep are the Roots." They were mainly people who had been in and around the studios and places in Los Angeles and Burbank and Hollywood, primarily as extras. But they formed this company and they were on the road. They made reservations from Los Angeles for a week at a Geary Street hotel. It was one of those small hotels that they had on Geary very near the two big theaters--the Hotel Cecil. When they showed up, the manager of the hotel said this was some great mistake. They said, "No, we have a written confirmation." He said, "Yes, I see that. I'm terribly sorry, but we don't have any rooms. It was a mistake."

At that time, I was practicing law, and so they came to me with their complaint, and I filed the first lawsuit. I filed it and served them and got ready to take them to court, and they

capitulated. They said they were willing to enter into any kind of a policy statement that we wanted. I was talking about a lot of money. I didn't think we were going to get it. In any event, I do remember that that case settled, and my clients didn't want me to settle it on that basis, but I persuaded them I was correct. They settled it for \$500 of attorney's fees and costs and whatever our expenses would have been, and for a declaration of policy in writing that this hotel would not discriminate against any guests on account of color or race. They posted it, and a lot of people said why didn't we get \$10,000. I said, "That's worth more than \$10,000. That's the purpose of doing this." Gradually, the other restaurants around began to see--So they still did it for a long time, subtly. Ben Swig immediately proclaimed what the policy was at the Fairmont, and with that in mind, the Mark Hopkins trembled. The Mark Hopkins had at one time been owned by Gene Autry.

Hicke: Is that right? I didn't realize that.

Redevelopment in the Western Addition and Japantown

Poole: There were all of these kinds of things that had to be done in San Francisco. When they did the first redevelopment construction in San Francisco, it was necessary for the Board of Supervisors to designate an area [for redevelopment], and the area they designated was the Western Addition. The part of the Western Addition that they designated was an area that ran from about, I guess from Fillmore Street through about six blocks over and from around Geary or Post and going down to about, I guess it would have been Golden Gate. There were five or six of us lawyers who worked on it at the instance of the Council for Civil Unity. The proposed ordinance was drafted in my office, and we came and presented that to this big public meeting, which was held in the Civic Auditorium, as I remember, the night before the Fourth of July. I think it was about 1964. That was a project that, for a lot of reasons, really didn't get going until years later. It's there now. What had happened was, when World War II hit, there were many Japanese in that area.

Hicke: It's very near Japantown.

Poole: That is correct, and Japantown was included--the area around Fillmore Street and Steiner and going from Pine or Bush up the hill. So they moved the Japanese out, and, of course, that meant a whole lot of the structure that made up the Japanese community was just gone. As long as they were there, they paid up their

obligations. But they put them in concentration camps, and a lot of them lost their property. A lot of the property was taken over, and that is why that area, for a long time, became so heavily black. When World War II went on they needed workers. So in two places they did construction or utilized the properties. One was over in Marin City, where those highrises are. Well, I'll tell you about those things too. They moved the Japanese out, and, for example, a Japanese recreation hall became the Buchanan Street YMCA, and it wasn't until they built Japantown that the Japanese began to get that area back.

Hicke: It's interesting how these neighborhoods change.

Poole: Yes. You had this problem, which was that lots of people were very unhappy with the whole business of mass removal of people because they were who they were. I can remember them saying, "I guess the next time they come, they'll grab all of us up." I said, "Well, you never can say that they won't." That was the one thing that I never forgave Franklin Roosevelt for. Never. I thought it was such a horrible thing. I couldn't believe this.

They began to come back, and on Post Street, all those commercial structures had all been Japanese, except there were some changes made in them. So they got them back, and there was some conflict. A lot of the titles had passed, because they had foreclosed and the people were in the concentration camps. The redevelopment area was a good idea. These were terribly old structures. It was hard to think about. A lot of people just didn't even think about the Japanese.

I had a very good friend whose name was Moss Yanamura, and he had been one of those who had enlisted in that brigade that went overseas. He told me more about the inside of those concentration camps than I had ever known. These were the things that were going on in this city, and a lot of people were trying to do as much as they could with what the city was. There seemed to be very little difficulty in turning over large areas in the Western Addition to black people. In fact, they wanted to keep them out of the rest of the city.

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Poole: Gradually the Japanese began to come back. Of course there were a lot of them down in the valley. They had been farmers, and they had lost everything. The farmworkers--Cesar Chavez got that, and that was a much more militant struggle than a lot of people know. People in my situation of my generation were torn in a lot of different ways.

When I was in the District Attorney's Office, people would be appalled that I would be up there negotiating with merchants. I used to tell them, "Go to hell." Pat Brown was the D.A. for about three years while I was there. Pat, of course, wanted to run for governor eventually. And when he became the attorney general, he was succeeded by Tom Lynch, a very sentimental and deep feeling Irishman. Tom never, never said a word of discouragement. People would say, "I remember telling the district attorney that I don't think this is part of your job." I'd say, "No, it's not really a part of my job, but I'm a citizen too, are you?"

Hicke: You're talking about now your involvement in this redevelopment.

Poole: The Board of Supervisors passed it.

Hicke: They approved the redevelopment plan?

Poole: They approved the redevelopment plan, along with some changes that they voted for, and the city attorney said that his office would do that, and we accepted that. That, we thought, was going to make some difference. But the years went by and they had never implemented it. Sporadic efforts to get going on it weren't successful.

In the meantime, I have been telling you about the employment or lack thereof. When the department stores and automobile sales places began to put these things up on the window saying they had equal employment, they treated everybody equal. They treated all people who were black equal, and they treated all who were white equal. [Laughter]

Then the young people came and sat in on automobile row. That was Van Ness Avenue. I was appalled at that. They were sitting in, for example, in the Chrysler place. They had these big Chrysler roadsters they were selling for the enormous amount in those days of about \$6,000. They were sitting in there, and it was just a mess. We had meetings with Ben Swig. I must say, he was pretty active in this, and he asked us to come to a lot of meetings.

Hicke: Were you acting in an official capacity?

Poole: No, no.

Hicke: As a citizen?

Poole: That's all, just a citizen. We would meet with these people, and I remember that the general counsel of the Bank of America was at one of the meetings. I can't remember his name now. We used to

see him at the symphony, and he was a very friendly guy. The Bank of America said, We're equal opportunity employers, we even have a manager who is--I'm not sure of the term. It wouldn't have been Afro American. I think black was sort of in at that time. So he was saying they had a manager. It was true, this guy was the manager of the Post-Fillmore branch, and that was the only one. You could go across this wide, wide land and you wouldn't find another one. We knew the manager, and we said, "You mean Chester?" He said, "Yes." I said, "He's the only one. Where else do you have one?" "Well, we're working on it."

Hicke: Could I just interrupt and ask, did you ask these questions as lightheartedly as you did just now? Or was this a serious sort of confrontational type of situation?

Poole: Oh, we were serious. We were trying to make use of the threat that a lot of these young people were protesting--without encouraging them to do it, but it was going to happen. We used to say to them, "We're not trying to take over your place, and we know that you have a business to run, but you'll have to run a business that treats people fairly. If you can't do that, you're going to have one hell of a time, and none of us can stop it. We don't have to start it, we just can't stop it." This went on, and we had meetings. As I said, we'd go to the Fairmont Hotel, and Ben and some his people were there--Cyril Magnin. It took a long, long time for the Fairmont to be the way it is now. You walk in the Fairmont now and you look behind the desk and you see people behind the desk of all races. They had one there in those days. He was a showcase. What we were really trying to do was to respond to a felt need.

Marin City

Poole: There was something I didn't finish. In World War II, they needed workmen, and here we were on the shores of the Pacific, and so they brought in a lot of workers that came in from Arkansas and Mississippi and Louisiana and that way, and they were building ships all along the bay up here--big merchant-men. Up at Mare Island they were doing the submarines. So they had these people and there was no place for them to stay within easy access. That's why the Housing Authority took over part of Marin City and built those places for them and eventually put those big towers over there.

So you had that going on, but it was later in the war, rather than earlier, when they started really getting a large number of

labor people in there. Even at that, the labor unions didn't want to accept these workers into the labor unions. The person from whom we rented the house in San Francisco when we moved from Oakland, Joseph James, was a labor organizer. He was also a concert artist with a marvelous voice. Finally, he got an offer to come to New York and he couldn't refuse it. He left.

In fact, it started the year before we came to California. It started in 1945. There was a very famous case. It was something like James v. The Boilermakers. It wasn't that, but it was one of those seamen unions, and inside the union they had a separate black union. They went to the Supreme Court of California, and the Supreme Court of California said, You can't do that. If you're going to represent the union, you're going to have to represent the [whole] union, and you can't do part of it. That principle is really what started to open up jobs in the union activities. Harry Bridges and the longshoremen did it and had done it always. The Sailors Union of the Pacific did not, not for years. They were defiant.

Eventually, the war ended and there was no longer employment, because they weren't building any more ships. So a lot of these people were sitting over there, and they didn't have jobs anymore. So they converted a lot of the housing over in Marin City to the towers. That was a festering situation there, because you look up from those towers and see the fast traffic going into Sausalito and out across the bay. Then the Housing Authority decided to sell some of the adjacent land to some builders.

Hicke: In Marin?

Poole: In Marin. They had a little difficulty there because-- This actually now will get you to the end of the sixties when that really happened. That may not be too relevant. I represented the builders over there. We joined with the secretary of Housing and Urban Development. They wanted to build this housing, and there were a group of people who insisted that they would have to make some provisions for low income people. So we eventually worked that out to the satisfaction of the Board of Supervisors in Marin County. They weren't satisfied. They really wanted more than they got.

Hicke: Who are "they"?

Poole: The people--they had some organization. They were all black people.

Hicke: Sort of a homeowners association?

Poole: They didn't own the homes. This was owned by the Housing Authority. The Housing Authority conveyed the property to the builders, and the builders were required to do a satisfactory plan and agreed also to put in some housing for moderate income, but not for low cost. You had those stick houses and you had also the big towers over there, and that was always a festering source. The houses were built, including an apartment building, and the builders kept their word. They made provisions for moderate income people. If I had been smart, I could have exchanged my legal services from one point for one of the houses that was there, but I didn't see it at the time.

Marin had always been a community that discouraged black people from moving into the various cities as best they could. A friend of mine, who was a dentist, Daniel Collins, bought a house up on the slopes of Mt. Tamalpais. It was said that the realtor said, "Dr. Collins has gotten in there, but nobody else is coming." That was the situation for a while. Now, if you have the money, you go in--you go there.

NAACP and National Urban League

Poole: There were two national organizations that I belonged to. I was a director of the NAACP Legal Defense and Educational Fund. That was after Thurgood Marshall had left the position of counsel. He was the head of that. In the Lyndon Johnson era, Lyndon Johnson appointed Marshall as solicitor general and then appointed him to the Supreme Court. He was succeeded by a fellow named Jack Greenberg. It was at that time I became one of the directors of the Legal Defense and Education Fund. So we had a great many interests in a great many places.

Also, I became one of the national trustees of the National Urban League. I was on that for six years.

Hicke: Can you give me some sample of your activities in those two groups?

Poole: The Legal Defense Fund had a very good working structure. Their component supporters were lawyers. They had affiliate lawyers in many places in the country. Well, you remember, it was that organization specifically that was engaged in the Brown v. Board of Education case that was decided in May 1954. They had a whole lot of not nearly so well known cases, but all over the South they were challenging the schools and the universities and reviewing

the situations where they have a guy in a university class and he's sitting behind a big pillar, and that sort of thing.

Hicke: And they were challenging them in court?

Poole: Oh, yes. They were in court all the way.

Hicke: What were some of your problems?

Poole: I was a member of the board and one of their advisors, and they looked to us for input on both local as well as national things that we thought it was appropriate for them to become interested in.

Hicke: So a problem would come along and they would ask you whether they should go ahead with it?

Poole: Yes. We were the Board of Directors. There was a director, but we were the Board of Directors. We were dealing with professionals, so we took their judgment on a lot of things. It was quite interesting. They had scores of lawsuits going, and, of course, you'd often get to a place where you had to make some priority assessment. They always needed money, and lawsuits took a lot of money. They were affiliated with certain lawyers in certain places in California. Those people were like regional directors. And then there was also the NAACP. The Legal Defense Fund was established by the NAACP.

Hicke: Then it's kind of a separate entity?

Poole: Not at first. At first, it was the litigating part of the association. But then when they were passing the laws on nonprofit activities, then you had to be strictly nonprofit, and that wasn't a difficulty, but you had to keep the nonprofit records to qualify, and so it was determined that it was in the best interests of both the NAACP and of the Legal Defense Fund, which by that time was the tail wagging the dog almost, that they separate. The oldtimers on the NAACP believed that in doing so, there wouldn't be a whole lot of difference, but they didn't know Thurgood Marshall. They didn't know him well. There was a lot of anger. Gradually and eventually, it cut itself separate completely. That was an occasion of some bad feeling when that happened. There was always some question of whose side you are on.

When Charlotte, my wife, had gotten out of college, I think I told you, she had come to Pittsburgh and that's where we met; she was a newspaper woman, but she left and she went to New York and became the director of information of the NAACP. So I had strong

ties, in fact I knew them all from the years before. When I later on opted to become a director of Legal Defense Fund, there was some murmuring, but it was the right place for me, and I did enjoy it. I was still a member of the Legal Defense Fund until I became a judge, then I had to get off of it.

Hicke: What about the Urban League?

Poole: I was a trustee of the Urban League, a national trustee of the Urban League, and I guess I was on the Urban League from 1969 until 1976--it could have been '75. When I became a judge, of course, I had to get off all of these things which had litigation components, and I knew that, and I did that. I was director of a couple of companies in addition to Levi Strauss.

Hicke: Which ones were those?

Poole: One was a firm that built fabricated housing, and I was also a director of the Redwood League of California. I enjoyed that because those people love trees like nothing else. I used to enjoy that very much, but they were always in court. So I had to resign from the Redwood League also.

American Bar Association

Hicke: You were in ABA I think. I don't know what you did.

Poole: The first thing I did for the ABA was to turn them down steadfastly when they wanted me join them. I said, I wouldn't be seen in the dead of night with you people. The reason was this. When I got out of law school, I took the Pennsylvania Bar, and it was supposed to be one of the tough bars in the country. It was kind of screwy. I took some instructions from an old fellow who had been doing this for years and years and years. He didn't have a cane, but you would think that maybe he should have had a cane. He was just strange, but he taught me all of these phrases, and they were in Latin. Now I knew Latin. I had taken three years of Latin--one year in high school and two years in mid-school when I was in college at Michigan, and then one year in Roman lyric poetry, which I loved.

I was a great lover of all kinds of lyrics--Browning, I took a course in Browning, I took a course in the Bible as literature. When I was notified that I had passed the Pennsylvania Bar, I also received an invitation to join the Pennsylvania Bar Association, but that was not a bar association like California's is. It is

now, but it wasn't in those days. It was an association of lawyers.

Hicke: Informal?

Poole: Yes. They really had no actual responsibility to the state. They were just lawyers with their ethics and whatever it was. I was invited to join the Pennsylvania Bar Association and I did. I think that was the first and last time I ever saw it, but I got an invitation to join the American Bar Association.

Hicke: And pay your dues.

Poole: They sent me the invitation, yes. They were recruiting the young--

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Poole: They were recruiting. They had these recurrent recruiting campaigns. In Pennsylvania in those days, after you graduated from law school, you had to go through six months of a clerkship, and you would be a clerk for some judge or some lawyer or lawyer's office. They'd pay you a pittance. I think two months of it had to be after you had passed the bar, maybe it was four months. Altogether, it was a six-month clerkship. You had someone who was called your preceptor. He was going to teach you the precepts of the profession and all that. I was with a small firm, and they were good people. They were very good lawyers, and I did learn a lot from them at the time I was with them.

I was waiting for the day when I would finish that clerkship, because what I really wanted to do was to get into that New Deal business with Franklin Roosevelt's people. I got an invitation, as did some of my classmates--we exchanged communication with each other--to join the American Bar Association. I looked at it with some skepticism, because you had to fill out a card. On the card it listed a number of nationalities and racial groups in a little block on the side, and you had to check which one you were. One was full-blooded descent and loyal American citizen, one was American Indian, one was Asian Indian, and one was, I can't remember now whether it said Negro, I think that's what it said, or it could have said African descent, but there was no doubt what they meant.

I marked the box and sent it back with my \$7.00 dues. You had to pay an admission fee. It wasn't a check, because I didn't have a checking account. It was a postal money order. In about three weeks, I got a letter from the ABA which said, "Dear Sir: We regret to inform you that the Committee on Admissions has not seen

fit to accept your application." Heck, I knew what they said about the ABA. So that was that. I then went on about my business. I went to the National Labor Relations Board. I was there until I got the call to go to the military, and I went through my military service, and I did my forty-two months in the air force and came to California.

After I was appointed by Pat as an assistant D.A., a lot of the lawyers on Montgomery Street became aware of my existence, and so when they periodically had drives to get members, they would send a couple of their young lawyers with a spiel they would give you. They'd come over, and I'd have them sit down and they would tell me all of the advantages of ABA. I said, "Well, I appreciate that. Now, I'm going to tell you one." I would tell them the story I just told you. I said, "I needed the ABA in those days. I needed something to make me feel that I was really a lawyer. I had known that I was going to be a lawyer since I was about seven years old. I got the response all right, and that is enough for me to last all this time. So you go back to your office and tell your boss there what I told you." Then they would say, "You've got to help us break this." I said, "I don't have to help you break anything."

When I met my very good friend Jerome Shestach, who was a Philadelphia lawyer, a partner in a large law firm--the Segal firm they called it. Bernie Segal was active in the ABA, and they tried to get me to join the damn thing, and I told them that story. Bernie said, "Look, that was wrong, but what you have a chance to do now is to make some of this stuff go right. There's lots of room for you." There were lots of things in the ABA--it was almost like a feudal system.

One day I got a call from the ABA and they said, "We've been asked by Mr. Shestach to inquire if you would be a speaker at the ABA forthcoming convention." I said, "I don't know, I hadn't planned on it." They said, "He seemed to feel that you might do it and he said he would call you, and I'm just calling to ask you if I may send these materials to you." When Jerry called me, he said, "We want you to come to the meeting and we want you to give a talk on the program. We have this new section. It's a section of individual rights, and it's going to meet in Honolulu. We have already found out that if we invite you to do this, the Department of Justice will defray your expenses." [Laughter] He said, "You've got to do it." So, I went.

Hicke: Do you have some idea of about when this was?

Poole: Yes. This would have been 1966, I think it was. I went there, and they were nice people and everything. I was one of four

speakers. They were all talking about the good things that could be expected from the functioning of this section of individual rights. It was a new section, and it was not favored by everybody, and there had been some opposition to its formation, but the Board of Directors had been persuaded, primarily by Bernie Segal and Chesterfield Smith and some of the others on there, that the ABA would either have to reach out and embrace lawyers or it surely would decline, and you can't live on what you used to do in the old days, and so forth. That kind of discussion was going on there too.

One of the other speakers--I can't remember his name now--was from Louisiana, and he got up and he wanted to placate things. He got us there and he was talking about how they treated the "Negras" around his way in Louisiana. It was more like it was the "Negras" that almost didn't get in there. I followed him [speaking], and I said, "He's going to have a hell of time getting on in the world the way it really is now if he can't even pronounce simple words like that. If you can't pronounce a word that is reminiscent of the derogatory terms in which most of your people, particularly when they're absent, speak of or think of [blacks], want to have anything to do with anything like that. If you're typical of it, I've got another problem with this thing."

Hicke: You departed from your speech?

Poole: Yes. He apologized. He was one of these good old boys from down South.

Hicke: Obviously oblivious to everything around him.

Poole: Yes. With some misgivings, I joined it.

Hicke: What was the reaction to your speech? What did you say, and what was the reaction?

Poole: In my speech I was talking about the reason why you don't get [black members]. They were telling me that the policy had changed, but they still couldn't get many black lawyers interested in it, and it took some time to do that. They didn't know why, so I told them why. I just told them that story of mine. I said, "Even when you want to bring a speaker in to address the assembly, it's got to be Ralph Bunch. It's not going to be somebody who has been struggling without your help at all."

Anyhow, I became pretty much known for my forthright--not for that speech particularly--but for my forthright responses to a whole lot of things. Jerry and I talked about it, and I said, "Jerry, I've been in too many trials to believe that you can get

up on a policy of constant excoriation and win something. Sometimes, you've got to address the problem that it is, and you've got to be able to comprehend it in nonperjorative terms, and if you can't do that, eventually people get tired of you. They may not want to hear you anyhow, but you're taking a risk with me, because I can't tell when I'm going to tell somebody to go to hell. He can be president of the organization and it wouldn't make any difference to me. If I lose enough of my temper, I'll tell him that." He said, "Well, just let me know, and I'll join you." We went out and talked to Bernie Segal, and I told Bernie I would do it, so I did and I got along very well with them.

Hicke: What did you do besides just join? You were active in some of the--

Poole: Oh, yes. I joined the Section of Individual Rights. I also was invited to and joined the Criminal Law Section. I was one of the founders of the ABA's Section of Litigation, which is probably the biggest single section in the association now. I became the chairman of the Section of Individual Rights. Then I became a member of the House of Delegates--that's the operating part of it. Jerry said, "That's where you've got to get." Actually, I was tremendously flattered. When I would get up to speak, I always had a pretty good audience, and I didn't hold my tongue, but I wasn't there to cuss people out either.

I remember the first time I ever met Judge [Joseph T.] Sneed. Judge Sneed was the deputy attorney general in the Nixon administration--not during the whole time. He had been the dean of Duke University, I think it was. We were at a mid-winter meeting, I think it was in--I can't remember now--it was either Cleveland or in Dallas. The big item for discussion at that meeting in the House of Delegates was a proposal by a then fairly new lawyer, Mr. Bentson, Lloyd Bentson. He was a young Texan lawyer, and he was proposing a constitutional amendment to change the Fourth Amendment so that it would let police come in your house more freely. I was one of those they asked to respond to it in opposition. The top staff included the attorney general and the deputy attorney general of the Department of Justice. They were there. The solicitor general was there, and they were all speaking in pleading terms--it's time they get to this thing.

I think we had four of us, and when I got my time--[searches for book]. I thought it was in here. I'll tell you what it was. It was a book that consisted of the speeches of Dean Griswold, and they had been put into a bound book. It was a thing people read, then it finally came out in a paperback. It's around here someplace. It's just about eighty or ninety pages. I looked at

him; he was sitting in the second row, I remember that, and I was in the front.

I said, "I didn't think that I would ever hear this kind of an argument coming from you, sir. I've always had a great deal of respect for you, and I read your book when it came out--"The Fifth Amendment" is the title, they were speeches by him on the Fifth Amendment: the part of the Bill of Rights without which the Constitution couldn't have been ratified--I said, "When they first printed that book, maybe I've forgotten, that book sold for about four dollars and a half. Eventually though, they put out a little paper book. So a lot of lawyers, in the every day necessity of making a living, didn't really have \$4.50 to read your speeches, as much as they honored you. But they could buy it then. I bought it, and I read the whole thing from cover to cover. What you have said in there about the Fifth Amendment-- You realize that you couldn't say that without adverting also to the Fourth Amendment, and you did, and you've inspired I don't know how many generations of young lawyers to believe in this Constitution. Not that a Constitution can't be changed, but the concept which is being argued is that we should change the concept to make it easier for the police to come in.

I said, "Maybe they'll never come into your house, probably not, but I couldn't say if I went home tonight that they wouldn't be coming into mine, and thousands and millions are in the same position. Lloyd Bentson may be a very bright man and he may have found the solution to how these people are getting away with something, because the police can't get to the evidence, but I'd a hell of a lot rather have a sign that said 'You will not go past this mark without probable cause' than to have one say 'Go where Mr. Bentson sends you.' Now, if that's the way it's going to be, we're going to be changing this world, but I don't think this organization, as conscious as it may be about the need--Nixon had been inducted into office--I don't think that we're going to do this. I don't believe it. I've looked into the faces of many of the delegates of this conference, and I believe they are every bit as concerned as I am about both the Constitution and this. But I will go down with them and not with you." I got a hell of an applause. We beat that thing down--we beat it.

I saw the dean, oh, a year later. Mrs. Griswold was not well. She was in a wheelchair, and he was pushing the chair. He stopped and he said [to Mrs. Griswold], "Last year he spoke against what I had to say in there, and he beat me." And he said to me, "I want to tell you something. You've made me do a lot of thinking about that. Right now, I'm glad you won. But you know, eventually, no matter what I think or you, that's what they're going to try to

do." I said, "As long as they can't enlist you at the forefront of their battle, I'll be happy on that."

Hicke: That's interesting.

Poole: So as I say, I had a good stay in the ABA. But I became a judge. I still belong to the Section of Individual Rights. I still belong to the Judicial Section, and I still belong to the Litigation Section. I pay dues to them all, but when they were here a year and a half ago in San Francisco, I went to some of the meetings, and I got mixed up into a whole lot of things. Looking back on it now, I know that there are a lot of things that I probably still could have said and done in ABA, but as a judge, you can get yourself into a whole lot of commitments that you don't really want to that way. Although Jerry Shestach has tried very much to get my interest going again--he's going to run for president this time.

Hicke: You'll have to vote.

Poole: Oh, I'll vote. Oh, yes. I was still in it when I was on the district court, but I began to realize that I should not be looking forward to being back in the House of Delegates or anything like that again. But I can learn a whole lot from them, and so I was going to the last meeting. When they were in San Francisco, I went to those meetings. They met in Boston in February of this year. Then this summer, they met in New York. I didn't go to either of those meetings.

Hicke: Boston in the winter and New York in the summer. I don't know how they worked that out.

Poole: They meet in New York--I think it's every ten years. And when I was there, they used to go from New York to London, and they would meet with the British Bar there. I did it once with them.

In 1960, I challenged the Board of Realtors. We looked for a house--I think I was starting to tell you this about an hour ago--we looked for a house and we talked to a salesman on the phone. He was from a Market Street real estate company. We arranged to meet him, the next day was Saturday, I think it was. Yes, we were going to meet him Saturday morning at this place. We drove up to it, and he was sitting on the porch. He said, "Are you Mr. Poole?" And I said, "Yes." So he got off the porch, and he came and he said, "I'm sorry folks, I can't show you this house." I said, "Why not?" He said, "I'm a member of the San Francisco Real Estate Board, and they are members of the National Board of Realtors, and according to our code of ethics-- You see, there are none of your kind of people living in this immediate area, and

we're not permitted by our ethics code to introduce somebody in the neighborhood when there are none." I asked, "How does the first guy ever get there?" He said, "I don't know." But that's the way it was.

We went to another guy who took us to a house--all I remember about it is that it was a house that was in Forest Hills, and it wasn't too far from where Pat Brown lived. We were inside looking at the house and somebody came, and he opened the back door and said, "We've got to get out of here." I said, "What the hell do you mean, let's get out of here?" He said, "They're bringing some people in." I said, "What about it?" He said, "I'm not supposed to do this." So I said, "Do you think I'm going to run out the back door? You're crazy as hell." I said, "Come on Charlotte, let's go. We're going out the front, the way we came in." I said, "By the way, goodbye." There were people outside, and they looked.

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Hicke: Let me just go back and ask you one more question about the ABA, looking back on the time since you joined. Can you tell me, just in general, about the changes that have taken place since you joined, and the ones especially that you had a major impact on?

Poole: For one thing, a lot of black lawyers and Japanese lawyers and others have joined and become active members in the association, and that's all to the good. There still is a tendency for black lawyers to have local associations that are-- Did I tell you about the award I got the other day?

Hicke: No.

Poole: The Charles Houston Club, which is an association, which reminds me, they don't exclude whites. I said, "Well, tell me how many you've got in there." [Laughter]

Hicke: How many?

Poole: I don't know, I haven't seen them yet. They had this event over in Oakland. It was on Friday, the 20th, and they got it up without telling me they were doing it. It wasn't that it was a surprise, they just wanted to do it.

Hicke: You didn't have anything to say about it?

Poole: Right. When I heard about it, I said, "You did this for me? You already gave something." They said, "No." This was done about three years ago, you see. [Shows award certificates]

Hicke: [Looking at certificates] Three years ago, this one says, "In recognition of your dedicated commitment to the rule of law and appreciation of the leadership and legal counsel that you have provided for over fifty years. We salute you." That's dated 1990. And then this one says, "The Charles Houston Bar Association commends The Honorable Cecil F. Poole for his judicial excellence and for his dedication and outstanding service to the community."

Poole: They said, "We're going to have Willie Brown to come and introduce you, and even if you don't come, he's going to do that."

Hicke: And here's one where he introduced a resolution into the [California State] Assembly honoring Cecil F. Poole.

Poole: He's the speaker of the House, so he didn't have a whole lot of trouble.

Hicke: There was no opposition. [Laughter]

Poole: I said, "I'll have to come." I had been to Santa Barbara. They had this on Friday; I came back from Santa Barbara on Thursday night, and we had the death case of Mason, the fellow who said he didn't want to resist it, so we sat up on Thursday night, the three of us who were on that panel. I think I left here about eleven o'clock at night. The next day we were going to have oral argument. On Friday, I told them, "I can't come. We've got this death case that's going to be there." They said, "Let somebody else speak for you. We can't put it back now."

Anyhow, Debbie [McIntyre, Poole's secretary] persuaded me, actually, that what I should do is go when we got through with oral argument, and the other two judges on there said, "That's fine. Why don't you do that? Then, when you get through, you can come back." So we heard the oral argument, and we heard about two hours of it, starting at 9:30. Then I went over to Oakland to one of the hotels over there, and they had a mob of people there. I was absolutely shocked. They had this great mob of people there. They knew why I was late coming.

I remember seeing Justice Stanley Mosk; he was there, and a lot of my old friends were there. Stan and I were good friends. I got to know him when he became the attorney general of California. He had been a superior court judge in Los Angeles. In the same election where Brown was elected governor, Stan was elected attorney general, and we worked very closely together. We became very good friends. He was there, and I saw one of my former law clerks was there. I don't know how in the heck she knew about it. Oh, I know, she's with the Coblentz firm now, and

they had a table there. I said to Debbie, "I really needed this. I have a space on my wall that I have never covered yet."

Hicke: That's right. You need to put this one up. I think we've covered most of your extra activities then. So maybe we should stop for today. But let's make sure we cover all of your outside activities today, and then next time we'll start with the judgeship.

Travel

Poole: In 1977, Charlotte and I took a tour. We went over to Hawaii first, and then we went to Japan and we visited a number of the small cities. It was really interesting. You'd see a lot of the feudal buildings and castles. They are much more insular in these smaller cities than they are in Tokyo. We did that.

Hicke: Was this strictly sightseeing or did you talk to lawyers?

Poole: No. This was for us. It was sightseeing, yes. I've been to Japan about four times now. We went from there to Taiwan and were amazed at some of the things that Chiang Kai-shek was able to get out of mainland China when he fled from the Communists, including, where they have their Treasury, this huge emerald. It's this big [demonstrates three or four feet] and it's still in the natural rock. It's a huge thing. I said, "that can't be real, can it?" It was, and we saw all the things that they took. There was an art of collecting beads on things and making all kinds of designs without ever breaking it. There was a lot of it, and that apparently ran in families, people who were really good at it, and it became what they did.

Then we went over to Bangkok. At Bangkok they were having some riots. We were at a hotel called the D'Usethani, and it was at a crossroads like this [demonstrates], and the hotel was like this [demonstrates]. We were on about the fifth floor or sixth floor and we had a balcony, and these two crossroads converged, and martial law was to be declared at twelve o'clock. At 11:55 there were all kinds of vehicles. At twelve, in the area they would get farther and farther away, and then you'd hear nothing. Periodically, there would be shots. Charlotte didn't think that was so interesting. It was one heck of a thing then. Then we went up the klong, the river. I got a chance to imagine how it must have been for a lot of those people in the Vietnam War. They use these streams for everything, for rafting, for cleaning. I don't know how they can drink out of it.

Hicke: They live on it, I've heard.

Poole: Yes. So we enjoyed that. The next year, which would be, I guess it was 1978, the president of the ABA, Bill Spann, contacted me and told me that he, as the president of ABA, had been invited to bring a delegation of twelve people to meet and interact with the mainland Chinese version of lawyers and judges. The government wanted us to come. The government of China--we'd be their guests. We would pay our expenses to China, but from then on, they'd take care of transportation and everything. At first, I wasn't going to do it. Charlotte said, "Of course you're going." I said, "I've been out that way." And she said, "You have never been to mainland China, you fool." [Laughter] I said, "You don't have to get so mad about it." She said, "Maybe I can go in your place." I said, "If I posed that to Mr. Bill Spann, he would say, 'Oh, sure.'" Anyhow, so I went. There were twelve of us, and the group assembled in Los Angeles at a hotel down there. Unfortunately, my bag didn't go with us. My bag went to London.

We met that night. I knew everybody. There was the chair of the Section of International--something like that--and then there was the chairman of the House of Delegates--I knew all of these guys by that time, we were good friends--and Ruth Bader Ginsberg. I'll get my hands on these [pictures], but I think they are in some of my boxes and drawers; things that I haven't seen for years are still there.

Hicke: You've got a full archive somewhere, I'm sure.

Poole: Let me show you now. This is Ruth. Let me see. Someone took this picture in the hotel in Beijing, where we would meet with our friends for the day and plan the stuff.

Hicke: Are you taking these pictures?

Poole: No, somebody else took these.

Hicke: Did you take your camera?

Poole: Yes, I did, and I took pictures, but I have to dig them out. This is Leon Jeowski, I know that. This is the Great Wall. I've got some other pictures. They're in this desk someplace.

I had known Ruth a good while. She had been a teacher at Columbia Law School, and I think for one semester she was at Harvard, but I think she was also at NYU [New York University]. I had seen her since then a number of times; she was appointed by Carter to the District of Columbia Circuit Court, and I would see her periodically. We weren't close friends, but we were

acquaintances. We enjoyed that trip. Actually, we spent a lot of time with the vice chairman of the Party, and he and his people would come. They would meet with us. We had discussions. They would be challenging.

Hicke: What would you talk about?

Poole: What they insisted upon was that they had been well on the road to a viable legal system when the war broke out.

Hicke: Which war?

Poole: This was the war in which Chiang Kai-shek ruled the country. They overthrew him, and he and his people fled to Taiwan.

Hicke: That was right after World War II.

Poole: Right after World War II. There had been such disruption there, that in order to gain control of the country against the machinations of the people who were still plotting to overthrow the ones now at Taiwan, they had to kind of forego the development of these legal institutions, but they realized that it was a big world out there, and they had much to give and much to receive, and they wanted to discuss these things with us. You would think it would be some professional. No, no, the vice chairman was doing that. They were funny, and they wanted to talk. They wanted to talk in terms of how the United States could facilitate the importation of more goods, without being so finicky about the different things.

Hicke: They wanted to talk about trade?

Poole: Trade, yes, and the professors, for example, were very interested in such things as codes for tariffs, codes for determining allocations of goods and services, what we might be able to do to make it possible in our legal system for this to be a better world, because we would have these things available to us. They weren't dumb. They were smart as hell. We would talk about them afterwards. There was quite a bit of flying around the country. They provided all the transportation. We were flying in these Russian planes. Actually, that's where I got my silk painting of the Bundt. That's a thoroughfare down there on the waterfront, see. This is silk. This is a woven tapestry. I got it there and had it framed when we got back.

Then I had one also of a place that's called the Lake of the West. That's their Riviera. It's inland some distance. We had a marvelous time. We went to the Great Wall up there, and we went on one of their boats that took us down the Yellow River.

Actually, they did everything they could to be good hosts to us. We went to the summer palaces of the emperors. All in all, we were there for twenty days.

Hicke: Did anything substantive come out of this trip?

Poole: There were a few articles written, but nothing much of anything to remember. Ruth was trying to write something I remember, and she did do something that she once circulated, but it had not yet been refined. One of the things I'll tell you about the trip--when I went to get my passport to go on this trip, the Chinese Consul's office wouldn't accept my passport because it was from the year before.

Hicke: Oh, a stamp from Taiwan.

Poole: Yes, so they gave it to me separately. That was a very enjoyable trip.

Hicke: Maybe this is a good place to stop for this time.

VIII 1972 DEMOCRATIC CONVENTION AT MIAMI BEACH, FLORIDA

[Interview 10: September 27, 1993] ##

Credentials Committee Hearings

[Poole begins with a discussion of hearings held on diversity of the delegations to insure that minorities and women were included. These were based on a resolution approved at the 1968 convention calling for quotas for blacks, women, and youth. This had come out of a reform commission chaired by George McGovern. This discussion was not tape recorded. -ed.]

Poole: The party set-up was just about as tough as it could be. [Mayor Richard Daley] had all these aldermen and other politicians and they had all the delegate seats [referring to the Illinois delegation to the Democratic National Convention in 1972]. People like Jesse Jackson and a lot of others around there wanted to break that up, so they made a complaint. The chair of the Credentials Committee of the Democratic Party was Patricia Roberts Harris. She sent out a hearing officer, and the hearing officer that she sent out to Chicago to hear these complaints was a fellow named Louis Oberdorfer, who had been assistant attorney general in charge of the Tax Division in the Department of Justice at the time I was U.S. attorney. He and I were old friends. He went out there to conduct this hearing.

There were about seventy-five people, all of whom were delegates. They were all male. They would hardly let him talk. He was with a law firm at that time--one of the big law firms in Washington, D.C.--and they represented General Motors. General Motors had sold some motor coaches to the city of Chicago, and there was an argument about the performance or lack of performance of these vehicles, and there was a lawsuit either pending or threatened. When Lou Oberdorfer got out there, they did him badly. He couldn't talk. They were standing up making motions and everything. Finally, they started talking about his law firm.

He decided that was enough of it for him, so he called Pat Harris and told her that he had to get out because it was getting to the place now where they were very venal, and they were talking about his firm.

I've known Pat--had known her--for a long time, and she had asked me, "We're going to have these field hearings in different places in the country, and if we needed you, could we get you to be the hearing officer at one of them?" I told her to let me know, and never gave another thought about it. She called me. I was in Washington, D.C., and she thought I was somewhere down in Los Angeles that day. She was trying to get me, and finally I found out I was only about three blocks away from her. She told me what this was about and asked me if I would do it, and she said that they were very vicious out there. I said, "Well, thanks, Pat!"

Hicke: Yes, you needed that!

Poole: "Wish me only the best." But I decided I'd go out. They rescheduled this hearing and I went out.

Hicke: This is to Chicago?

Poole: Chicago, yes. I've got some of those clippings. They're right here I believe. I had a cousin, who at that time was a police lieutenant in the Chicago Police Department. He knew I was coming because he read the papers there. He said, "Do you want to stay with me?" I said, "No, I don't want to stay with you. I'll get you ostracized from the city." Anyhow, he came down and we had breakfast together. I went over there and I met them. Here they all were, and I introduced myself, and we talked. They were a very unruly bunch of people. They were used to hearing themselves talk, and they weren't used to listening to anybody else.

Hicke: These are the delegates to the convention?

Poole: These are the delegates, yes. They were all male. [Laughter] I called the meeting to order, much to their surprise. This was way down the line when that happened, but that all started with me.

Hicke: Tell me now what happened.

Poole: Here's what happened. When I started, I said, "I guess the first thing I should do is to put on the record my letter of appointment from the chair of the committee." Every time I would say something, there would be eight or ten of them get up and make speeches and things like that. It went on and on, and I was making a little progress, so I discussed with them what would be

the format of the hearing as I understood it and what I would do. I said, "This is not a court of law, and everyone here is a volunteer, and I know that you had some trouble with Mr. Oberdorfer." That prompted one of them to say, "Didn't I understand that when you were the United States attorney, you prosecuted some Black Panthers?" I said, "Undoubtedly I did. Was it some friend of yours?"

So it went on and on. Then they began doing the same thing they had done to Lou. They wouldn't stop talking. Somebody had furnished me with a little gavel, and I gaveled on the table there. I said, "We've been here for--" I think we went to lunch and nothing had been accomplished. They went to lunch and came back in about an hour and a half, and when they got back, everybody had a motion he wanted to make.

And I said, "Sit down." I said, "You know I am fully aware of what happened when Mr. Oberdorfer was here, and you had it within your power, by the sheer numbers, to make it impossible for this hearing to go on. I'm compensated adequately. I don't have to do this. I don't make any part of my living by coming to things like this, and I've got some clients in my law firm back in San Francisco who would be just as happy if I went back there to service them. But," I said, "I'm not thinking about doing that until I finish this job. As I say, you can make it impossible, but I want you to think this over. Each one of the complaints that was made against the delegation as presently constituted was either sworn, an affidavit, or was affirmed by it, and in any court of law that constitutes some measure of evidence. So you can make it impossible for me to carry on this hearing, and what I will do in that case is, I'll pack up my briefcase and I'll take these complaints and I'll go back to California, and I will go through each complaint, and I will take the evidence as I got it from the accusers that you wouldn't let me hear anything else, and I'll make a report on it." I said, "Do you want to try me on that?" It was almost as if the seas calmed. They were rushing upon the beach. So we got along pretty well from then on.

Negative Report on the Diversity of the Chicago Delegation

Poole: I listened to Jesse and his people and some of the others. It went on for about three days. When I got through, I wrote a report, and it took me about three days to prepare the report. Finally, back in Washington, they couldn't stand it any longer, because there were newspaper columns and clippings and so forth all over that. They asked me, "Would you read it to us on the

phone?" So I said, "All right. You may want to record it. I still have to make a few changes, but this is how it's going to be." So I did read it on the phone to them, and they got it.

When I got through, there was dead silence because of what I told them. My report concluded that they had violated every one of the laws of the canons of conduct that the McGovern report had advocated, and I felt that there was no question but that they had done so. My recommendation was that they be barred from participating in the forthcoming presidential primary. There was silence on the other end.

Hicke: Who were you reading this to?

Poole: I was reading it to Pat Harris and to Larry O'Brien. Remember Lawrence O'Brien used to be the postmaster general?

Hicke: Yes.

Poole: Let me tell you--their offices were in that building where the robbers came in.

Hicke: Watergate?

Poole: That's right. Their offices were in the Watergate. I don't know about this, but I'm telling you, it was three days after I had given them this report that the break-in at Watergate took place. I assumed, actually, that it was coincidental, but I wondered if they were trying to get that report, because that was dynamite. Nobody knew about it except the members of the committee and my secretary and I. That was my report, and six weeks later they had the Democratic National Convention down in Florida. The Daley delegation was challenged. Take a look at these clippings.

Hicke: This headline says, "How Mayor Daley Lost His Gamble on Delegates." And that's how he lost it, right?

Poole: At the convention, he and his people were saying that they would never throw out the Illinois delegation. They said, "If McGovern wants to be president, he'll never do that." But they adopted my report, and they barred the [Illinois] delegation. So the delegates went home. I have a copy of the report I'll find at some point, but I won't take the time to do it now. It was quite sensational, and I was laughing all the way home.

Hicke: "Daley's Delegates in Retreat," this one says. They actually barred them from participation?

Poole: I came across the report one time not too long ago. It's a pretty long report. I enjoyed that.

Hicke: And I would say that was fairly crucial.

Poole: Yes, I enjoyed that.

IX JUDGE, U.S. DISTRICT COURT, NORTHERN CALIFORNIA, 1976-1979

Finishing Cases Undertaken in Private Practice

Hicke: Okay, so now, where we left off before was, you were appointed to the district court, and you had a hard time making up your mind, but you finally did make up your mind and broke the news to your wife. So what we need to start with, I think, is what were your early impressions, and what were your first responsibilities, and what happened as you came on the court?

Poole: I was nominated by Gerald Ford, and I think that that was sometime in July of 1976.

Hicke: Yes, that's what I have.

Poole: Then I had the problem, actually, of having to unload a lot of the cases that I had. It was quite a problem. We had one case in which my clients were lawyers. They had a tax shelter practice, and it was one of the most complicated schemes ever heard of. Their clients were mainly people who had high incomes. They had movie people and prominent professionals, doctors, lawyers, who had money and wanted to invest it. There was a lawyer down at Los Gatos who was the genius behind this, Harry Margolis. He's dead now. His practice was devoted to these schemes of investment, and these were a part of the offshore trusts--those things were in the news for a while--and these were in the Caribbean countries and the trusts were there. The only way you could understand how the money went was to draw it [schematically]. He had blackboards as long as from that window to that door [demonstrates].

Hicke: Twenty-five feet or something like that.

Poole: He would draw what happened to it at different places and all that. At the time he contacted me, he had pending in the United States Tax Court approximately 350 tax cases. Not all of them

were in this, because some of them were routine tax cases. He had this thing, and the government was frustrated, because in the tax court, Harry would win some and he'd lose some.

Hicke: Were these fraud?

Poole: Well, that's what the government was saying. I never knew, because I never really knew how it worked. The government got tired of having only indifferent success in the tax court, and they decided this really was a big fraud, let's treat it like a criminal fraud, so they indicted him. Before they indicted him, they were calling a lot of his clients to the grand jury. The grand jury was sitting up in San Francisco, but they were calling people from Hollywood, producers of pictures, and trying to get them to give them statements.

That's how I came into the picture. Harry came up to see me and asked me if I would represent some of these people who were going to be called before the grand jury. So we talked about it, and I said I would. It sounded kind of interesting to me. This was before I was nominated, but it was strung out well after the nomination. The two assistant United States attorneys who were working that case were people whom I had hired when I was the head of the office. As I said to one of them, "What are you doing here? I didn't hire you to be a trial lawyer. I would never let you get into a court if you had to do this sort of thing."
[Laughter]

Anyhow, I met with these witnesses. I went down to a couple of places in Southern California and met with them. The first one that I remember meeting with--it wasn't the first one, but I remember he stands out. He was a plastic surgeon, a very successful, very highly skilled plastic surgeon. First I met with his certified public accountants. We had a conference, the two accountants and I, and they were anxious that I not-- They said he didn't even know what happened, how the thing happened. They had gotten him because he and his wife had gotten a loan from Security National Bank of \$675,000, and Harry had invested that. "If he is going to go to the grand jury, I want to know what is the state of his knowledge, but I don't want to be feeding stuff to him." I met with his accountants first and they told me a lot of things about this loan. They knew what it was. So he came in, and he had on his white jacket and he had the thing around his neck, and the kind of turban they wear. We started talking. They introduced me to him.

Hicke: So he walks in all dressed for his work.

Poole: He walks in with all this stuff. We got introduced, and so I said to him, "The government wants to know what happened to this \$675,000. What can you tell me?" He said, "What can you tell me?" And I said, "I don't know anything. I'm looking for wisdom now. I thought maybe you might be able to tell me what you do know about it." He remembered the loan. It didn't seem like it figured too importantly.

Hicke: Just a mere six hundred whatever.

Poole: I noticed he was looking at me like this [demonstrates].

Hicke: Staring and really looking you over.

Poole: Yes, and so then what he did was he came over to me and did like this [demonstrates].

Hicke: Put his hand up?

Poole: He said, "You know what? I could make you beautiful." [Laughter] I think he had three or four floors. He owned the building. It was in--not Hollywood--it was right outside there, near where Ronald Reagan has his home now, Bel Air, something like that.

So I went and talked with him, and he was very nervous about the idea of going to the grand jury. I went back to San Francisco and I talked to the Department of Justice people, and I said, "This is going to be a long process, because I'm going to tell you, when he starts answering your questions, you're going to not believe him. I am not going to tell you whether you should or shouldn't, but I'm going to tell you this: I can walk out of the room, and he'll give you whatever the answer--he knows some things, and he doesn't know some other things. I have told him that when he's asked a question that he can answer, he has a choice of either answering it or refusing to answer. But whatever he does, he's to tell you the truth as he knows it. He's not a lawyer, and I told him not to try to be a lawyer."

I worked out a plan with the assistant U.S. attorney that instead of going to the grand jury with him, we would take the deposition in their office. I'd be present. I wasn't going to say anything, but if he wanted to consult with me, I would do that. I said, "You'll save a whole lot of time." They agreed, which I thought was some indication of their trust that I wasn't sitting there scheming with a whole lot of lies. They got nothing from him.

Then there were a couple of other doctors. They were from somewhere around San Jose and down the peninsula. I got them to

do the same treatment with them. Instead of going to the grand jury, they came and talked with them. It went faster than it would have before the grand jury, because their instructions from me would be when they were asked a question, "When you're in doubt about the answer, you ask them to let you come out and consult with me. I'll be in the room next to you." That takes a lot of time. When they agreed to do this by way of a deposition, it did go faster.

Eventually, the grand jury indicted three people. They indicted Harry and a couple of other lawyers. Then Harry asked if I would represent his chief. He had six CPAs in his office, and he asked me if I would represent the chief CPA, and I agreed to do so.

It was after that that the nomination came out. So here I was. I had been nominated three months and I still hadn't taken the oath. I had some other cases that I was having difficulty getting out of the way. I did a lot of tax cases. What was happening was that the district judges over there at the Federal Building were embarrassed to have me coming in and arguing cases in their chambers because I was soon going to be one of them. [Laughter] It was something.

As part of that case, the government was taking depositions all over the Caribbean, and we had depositions scheduled for Brussels and Paris. The government came into the court with a motion. Ordinarily you tell them who's going to be the deponent, whose deposition you're going to take. They had this affidavit why they shouldn't be required to disclose it. They came into the courtroom of Judge William Orrick. Bill Orrick and I at that time had been friends for more than twenty years, but he was no nonsense in the courtroom. So they filed this motion to suppress some of the evidence, or not let us have it at this time, so it wouldn't have to be disclosed until there was a trial. I said, "Your Honor, how can this be? They want us to go from here to Europe to take a deposition from someone whose name we don't even know. To do that puts us at a manifest disadvantage. We've got one hand tied now, maybe both hands tied behind us, because I don't know what they've put in that piece of paper they've given you. But if they're indicating there is any threat coming through me, then you've got some liars in this courtroom."

So we argued and argued and argued, and he finally said he was going to rule against us. He wasn't going to let us see it. I said, "You mean you're going to tell us to go across the sea, when we don't know where we're going or who it is? We don't have any means then. But some of this is going to delay this court for a long time. Because, Your Honor, if you do that, we're going to be

delayed a long time in getting this case to trial." He said, "I think I can push it on a little bit." I said, "Maybe you can, and maybe you can't. But in any event, it is not going to be very accommodating." So finally he looked at me--there were a lot of people in the courtroom then--he said, "Mr. Poole, when you get to be a judge on this court, you'll do it your way, but I'm going to do mine my way. And my way may not be yours." I said, "You can bet your boots it's not." [Laughter] His name is on my admission to the Supreme Court.

Hicke: Is it?

Poole: Sure.

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Poole: [Searches unsuccessfully for his admission papers] Anyhow, I was admitted to the U.S. Supreme Court in 1961 and that was in the early days of the Kennedy administration. Bill Orrick was then an assistant attorney general, and it was on his motion that I was admitted by Chief Justice Earl Warren.

So it was getting increasingly difficult for me to be able to go into a courtroom without some embarrassment, and I could see that I couldn't stay with this case. I finally got a lawyer from down in Southern California who had done some of this kind of work, whom I knew to be very sharp and very bright. Before I gave up the practice, [William] Bill Schwarzer and [William] Bill Ingram--Schwarzer was a lawyer with McCutchen, Doyle, Brown & Enersen, Bill Ingram was on the Superior Court in San Jose--and I were nominated. I think I told you that their two names were sent in at first, but they didn't send mine in. The Ford people were concerned that this wouldn't help them out in the Republican primary as against Ronald Reagan, who was threatening to run.

Finally I realized that the time was up and I had to do it. I got somebody to take my place, and we went into Stanley Weigel's chambers. The lawyer who was going to take my place came and we had an affidavit. He explained that he would require that the--They had these spurious trial dates. They weren't going to go out on that at that time. But he said he would require thirty days before he could do it because he was just beginning a case involving an engineering defect down in Ventura County. Stanley--Judge Weigel--didn't believe that he had this case.

I said, "Your Honor, I know that he has a case because it was upon my reference that he became associated with the case. I know the case to be a difficult one. I couldn't do it because obviously I don't have that much time." So Stanley was sort of

saying, Okay, all right. For whatever reason it was, I don't know, I think this lawyer sort of rubbed him the wrong way, because he is one of these persons who speaks clearly, articulately, and loud, and I think Stanley didn't like that. He said to him, "I can see, sir, that you are striving for some kind of advantage." Well, the ball left my court and went into the other court at that point. This fellow stood up and he said, "Your Honor, you're a judge of this court and I respect you. I know you don't know me, but you have no right to presume that I am not responsible in my representation or that I seek some untoward advantage. I haven't given you any cause for saying that, and you have no business saying it." I thought Stanley would have liked to punch him in the mouth [inaudible], but he took the paper.

It was a substitution, and we had prepared the paper with a paragraph giving a thirty-day continuance on the assumption that Stanley was going to say all right. He didn't want to try the case. He crossed that out and signed it. We went straight down the hall to Bob Peckham, who was then the chief judge. I said, "I don't know why he did that. He didn't need to." Anyhow, Bob took care of it.

I was representing the chief CPA, but they split them off. Three lawyers went to trial on it: Harry, and a lawyer from Oakland who was associated with him, and a woman lawyer who was from Southern California. They tried this case, let me tell you. They tried this case. It was Ingram's first long federal case. It must have gone on for six, maybe seven weeks. The funny thing about it was they had given us discovery. I got eighty-four boxes of machine records. They brought them to the Federal Building and they put them in an empty room there, and we hired a couple of trucks and took them down to Harry Margolis's office. I said to the assistant U.S. attorney, "You still don't get it do you? You're going to try a civil tax case and the jury isn't going to understand a word. We're going to defend a criminal case. You watch."

So they went to trial, and after all that period of time, the jury acquitted the woman lawyer and the man lawyer. They disagreed on Harry. They had a hung jury on him. So these two were out. My erstwhile client, the chief CPA, never went to trial. They tried Harry alone and he was acquitted. No jury in the world could understand what they were talking about, because you had to be able to show that there had been a fraud. To show that, you'd have to show how the money was invested and reinvested. That's what we meant by the money is traveling. I to this day don't know how it happened. And I wasn't even interested in how it happened. I certainly had some fun trying the case though. Bob assigned that case to Bill Ingram. So Bill, having

gone through his invested jurors and all, called me one day. He said, "Did you ever know what this case was about?" I said, "Not much, Bill. But I figured that I wasn't alone. I didn't think the government knew much." He said, "They had no idea where they were." On the second trial, he was acquitted. That's how that case ended.

Do you remember there was an outfit called EST was it?

Hicke: Yes, EST [Erhard Seminars Training].

Poole: The head of that [Werner Erhard] was one of the clients. Yes, he was one of them, and for a while, he was the one whom I was advising. They had lots of money.

Hicke: That was a big transition you had to make.

Poole: I remember I had a routine case that involved a husband and wife who were tax preparers, and they obviously were preparing tax returns that they had no business believing were correct. The husband and wife both agreed to either a plea of no contest or to plead guilty. When it got down to it, finally, I worked it out before Judge [Alfonso] Zirpoli that the wife would plead to, I think it's making a false statement to the government, and the husband would plead to two counts of filing a tax return not believing that every statement or allegation in there was true.

Hicke: So it's the responsibility of the preparer to ascertain the proof?

Poole: Yes. And then the last day I was going to be in any court on that side of the desk, he had thought about it and he didn't think he wanted to make that plea. So, I brought in Clinton White, who is now a justice of the California Court of Appeal, First Appellate District. I guess Clint's the presiding justice of one of those divisions over there. He was a good trial lawyer, and he agreed to take the case. Zirpoli gave him the same easy sentence he would have given if I'd been there.

Induction Ceremony to the Bench

Poole: I finished up all the things that I had to do, and then we had the induction ceremony in the Ceremonial Courtroom at the Federal Building.

Hicke: Did Judge Peckham make some special welcoming arrangements for new judges at that time?

Poole: Oh, I had a big ceremony. The Ceremonial Courtroom was absolutely jammed, and two senators were there--[Alan] Cranston and [John V.] Tunney, Governor [Edmund G. Sr.] Brown was there. Let's see, Attorney General Stanley Mosk was there. Oh, it was a mob scene.

Hicke: Was it up there on the nineteenth floor?

Poole: Yes. The Ceremonial Courtroom is still there, but they've got more floors now. They've done a lot of work up there recently. There was standing room only. It was kind of good. So then I went into oblivion.

Hicke: Oh, is that how you describe that?

First Paycheck

Poole: I'll tell you what I do remember. I think around about the second or third of the month you'd get paid. About three weeks after I had been inducted, my secretary brought in this brown government pay envelope, and I kind of absent-mindedly opened it and I looked at it. Now I can't tell you what the amount was, but I looked at it, and I thought, What the hell is this thing for? It was just a small amount of money. And then I saw where it said salary. So I went down to Bob. I was next to Bob Peckham, and I went down to his chambers, and I said, "Bob, how often do you get paid around here?" And he said, "Oh, once a month." And I said, "You mean this is it?" [Laughs] He said, "Well, remember now, it was five or six days after the first of the month before you took the oath." I said, "Five, six, seven days, what do you want? You mean this is it?" I couldn't get over it.

Hicke: You didn't know what you were in for?

Poole: I had to know it. I had to have some idea, but it was so much surrounded with deductions that they had--deductions for your health service, deductions for annuities, and all this kind of thing; so it was kind of hard. I had been looking for a couple of refunds--IRS refunds. And my first thought was this was a refund check. I thought to myself, Why did they go to all this trouble if that's all there was there? I never questioned it after that. I went home and told Charlotte about that, and she said, "You're just spoiled." [Laughs] It was something.

Some Early Cases

Hicke: What did it feel like to be on the other side of the table, as you put it?

Poole: You see that right there, that little statue?

Hicke: Yes. The justice with the scales. Is that what it is?

Poole: Yes. That was given to me later on by the first defendant I had when I went out on my first criminal hearing after I became a judge. I can't remember his name.

Hicke: Oh, I'll go look on the statue.

Poole: He was charged with some minor narcotic thing. I'm not sure whether his name is on there even.

Hicke: Well, let's see. It just says "Your first customer."

Poole: Yes, that's right. When I came into the courtroom and they said, "All rise," this was his case. I said, "I guess you're my first customer."

The government wanted him to get a pretty stiff sentence. He was caught with some amphetamines or something like that. His lawyer had asked for maybe a maximum of a couple of years, something like that.

Hicke: His lawyer?

Poole: Yes, the defendant's lawyer, and I gave him that. That was before they had these guidelines. He wrote to me. He used to write to me every now and then. It was different. It really was different, but it still was in the courtroom, and that's the part that I liked.

Hicke: You were familiar with the courtroom by then.

Poole: I did like the trials of cases. I got to the place where the lawyers had me categorized as one thing or the other. On certain kinds of cases, they said, "Oh, boy, he's tough on those cases." Some would say, "He's all right on this, and he's all right on that one."

Hicke: Do you know how they categorized you?

Poole: Well, there were a number of different ways, I'll say that. They weren't unanimous. By and large, I got along well with the lawyers. I liked jury trials. They were interesting--to listen to the witnesses and see what lawyers were on their feet, whether they knew what they were doing, which ones you wouldn't have for free. I had a great variety of cases.

Hicke: After you make a decision, are you able to put it out of your mind and go to the next one?

Poole: Some will worry you.

Hicke: That's what I wondered.

Poole: What you really have to do is, you have to do the best you can on it, and having done that, leave it, unless you become aware that something was omitted that you should not have omitted; then in that case you may even have to modify it, assuming that it's a modification, because if it's going up, you really can't do that. I liked the trial cases, because you saw all kinds of things in there. You could get some lawyers in there who were really very good, and who weren't simply there for spectacle. I didn't care for those who believed they were on a bully pulpit, but I came to the point where I could pretty much see before they really got to it where they trying to go. Every trial was a different trial.

I remember one that involved United Fruit Company. It dealt with the commercial way of ripening fruit. Up until that time, I hadn't any idea how they did it.

Hicke: After it's picked, I assume.

Poole: Well, for example, bananas. They pick bananas green and they ship them from Central America and bring them up here, and then they have these big processing plants where they expose the plant to gas, and that starts the ripening process. It was a civil case that involved United Fruit on one side. I've forgotten who was the complainant on the other side. The person had developed a new scheme--I don't know what kind of gas it was, but a new way of doing it. Some of the competitors felt that it was a pretty risky way of doing it, that there was a danger of explosion. There were some kinds of horror stories of things that happened in which people had been hurt. It was new, but more and more of the wholesalers were using it.

So one of them finally got himself in a situation where he was being charged with what amounted to slander of product, that is, he had indicated that he had advised his distributors that they shouldn't use this method because of the danger of explosion, and

the other side challenged him, and they finally got this lawsuit and they tried it. It went on for several weeks on the trial.

I finally instructed the jury. The defense to the contention that this was apt to explode was based upon some information that came up from Virginia or Maryland. The defense was that there had been some people hurt, but they hadn't been able to get anybody into the courts who could say that. So after I gave them a couple of days' recess so they could do what they wanted to do, I insisted then that we proceed with the trial, and we did. I gave the jury instructions, and the jury came back with some substantial verdict and with punitive damages on the ground there was a willful slander of the product.

Well, one of the defense lawyers I think believed that I had been kind of tough on them. I think I had been, because he was dragging it out. I told him in conference that "I wanted to give you an opportunity to make your case, but you told me when I was setting this case for trial how much your estimates were and, while I know that you can't rely upon pretrial estimates, you're really dragging some of this out and you're repeating things." He told me sometime later on he thought I was being hard on him.

The jury came in with the verdict, and I was surprised. I thought it was close. I didn't think they would even consider punitive damages, although I gave them the instructions on it. Two days later, the losing lawyer came up and said that they had now gotten confirmation that there had been these explosions. They believed that the information about them had been suppressed. They believed further that the plaintiff in there knew about this. That's a pretty bold accusation. They wanted me to stay the entry of judgment. They had, of course, a motion for a new trial, and they wanted to go to the East Coast to check into this and to get the concrete knowledge. I said,

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Poole: "You seem pretty confident that you're going to find this evidence." "Oh, yes, we are, Your Honor, oh, yes." I said, "I'll tell you what I'll do." To the loser and his lawyer, I said, "I would require that you accept the expense of transportation and lodging for the plaintiff and his counsel to go to the East Coast, and you can give me an estimate of how long you'll be there and what the probable expenses would be and so can they. At your expense, if you want to do that. Then I'll let you go out there, and I'll stay the judgment." They went back told their clients, and their clients were not that pleased. So they came back and they kind of sheepishly told me that they didn't think so. "All

right," I said, "I'll have the judgment entered and that's where we stand."

I saw him a number of times after that, and he was a good lawyer, and he still remembers that. About a year ago, he moved from one large firm to another firm, and I was sent a copy of their announcement, and I sent him a little note that I was pleased. "I hope your new associates or new partners will realize that they have a very fine trial lawyer acquisition to their firm. I can tell them." About four months ago, the same person was being considered for admission into the [American] College of Trial Lawyers. It's an ornament. They asked me for a recommendation, to fill out a questionnaire, which I pulled out, and then got busy on something and didn't send it.

The time for it passed. So I sent it to the association of trial lawyers anyhow, and I said, "Even though it may be now too late, and for no fault on his part--I delayed sending this out in the press of business--just for the record, I want to tell you I think he is a fine trial lawyer." Somehow he got news of this.

I see a lot of lawyers that I have known and a lot of them that I know from the bench, and I enjoy meeting with them on some occasions. I don't belong to many societies, and I don't like to go to testimonial things. As a trial judge, it's quite different than what we're doing here.

Hicke: In the circuit court?

Poole: Yes. We have calendars, and the computer gives them to us a year in advance. They're subject to change, but on the appellate court you can pretty much set your schedule, what you're going to do on things. In the trial court, you can't do so much of that. You say to counsel, "What are your several estimates about the length of time this trial will take?" And they'll say, "I'd say for the plaintiff, Your Honor, it will take us four days, maybe four and a half, but that's it." "Well, Your Honor, it will probably take two days." Three weeks later [laughter] they're still doing that.

"It's the Best Job There Is!"

Poole: The anecdotes from the courtroom are really something. There are all kinds of things that go on in the courtroom. When Fern Smith was inducted as a district court judge, I went to her induction, and she asked me to say a few words for her, so I did. I said, "Fern, I want to tell you, when I first thought that I was going

to become a district judge, it wasn't the first time, it was my third try, but I wasn't sure I really wanted to do it because what I loved doing, as long as I could remember, was trying cases. But I came out here to this building, the Federal Building, and I went to see Bill Orrick, and I asked Bill--by that time, he and I had a lot of quarrels--I said, 'Bill, you gave up your place in the Orrick firm to become a district judge. Do you think it's worth it?' And he said to me, 'It's the best damn job there is!' and that's what I'm going to tell you."

"You're getting the best damn job there is in the judicial business, I'll tell you that. I'll tell you something else, Fern, here today you're sitting on the front row of all of these judges, everyone of whom is senior to you, sitting either laterally with you or behind you. That's where you sit when you're getting inducted. It's going to be a long time before you sit up there again."

They're pretty much a breed, I think they are. We used to say, for example, when I was on the court, "To heck with the appellate court, we don't care what they do about this." They said, "Look, our job is to get them tried. Their job is to reverse it." [Laughter] I said [to Fern], "You're going to say that to yourself many times."

There is a lot of activity and flurry going on now because Clinton's got all these appointments to make, and it's going to be interesting to see.

Hicke: I think this is a good stopping place.

Poole: I guess so.

Significance of Federal Court Decisions

[Interview 11: December 20, 1993] ##

Hicke: Let me just ask you if you could tell me what you think the two or three most important things are that happened to you when you were a district judge.

Poole: First of all, I think there is a sense of dealing with issues of either personal concern by the persons who are involved in the litigation or concern because of its effect upon--it could be upon the nation, as a matter of fact--or because the issues that are involved before you are issues in which there is a great deal of

public concern. That's different from being, for example, a deputy district attorney who's trying somebody for grand theft. Not that that isn't a matter of concern to the state, but it's not earth shattering, and it's part of the local penalogical process.

For example, one of my assistants, when I was a United States attorney, is now a federal judge in Los Angeles--Terry Hatter. I brought Terry to San Francisco from Chicago, where he had been a deputy public defender. He was with the office about three, maybe three and a half, four years. Then he went to Los Angeles and did various things in connection with the interests of some of the universities down there about structuring the law in certain ways. He was with one of those foundations down there. Then he got appointed in President Carter's administration to the district court. He was, I guess, probably the first federal judge in the country to hold firmly and formally that the military could not discharge this young petty officer, I guess he was, because of his sexual orientation. I think Terry was probably somewhat overcome with how this focused on him all of a sudden. Although, as I told him on the phone when he called one day, I said, "Don't tell me that you were apprehensive. You've been planning this thing for a long time." I said, "Don't kid me, baby." [Laughter]

Hicke: Did he own up?

Poole: No, and he's called me several times. If someone answers and they tell me it's Judge Hatter, I get on the phone and I say, "I'm not going to ask you any questions. I'm not going to search your person or anything, and if you just don't say 'nothing,' you're going to be all right." [Laughter] But I never had anything quite so much the subject of nationwide interest as that.

The federal court system operates on a pretty high plane. For a lawyer, unlike the state system where you do have the state supreme court as a monitor for keeping the law straight, the importance of the rulings is much, much stronger in the federal system, because eventually a precedent may be created which will affect other states and other things as well. As a trial judge I had these decisions to make. Although many of them are simply corporate decisions and people wanting money and all that, by and large, it was what I would consider a strong cut above the usual state court practice. And I practiced law in state courts for a long, long time.

Hicke: A wider impact?

Poole: Much so, and then, you see, Congress makes these laws, and sometimes they make the law, as enacted, represent many concessions to many interests. What the original proponents of

the legislation may have had in mind may be way over here some place because, in order to get it through, they had to give some and take some.

I remember when I was in my confirmation hearing, one of the senators asked if I recognized that it was the function of Congress to make the laws, and the judges should not, by their decisions, attempt to enact legislation that Congress hadn't intended. I think he was a little bit surprised at what my response to him was when I said to him that there are comparatively few judges who really believe it is their function to enact or to change the law. Their function is to decide what it is and to do the best they can with the compromise that you've given them. Very often the matter that is of crucial importance is a matter that the legislators stayed away from, and they left it up there to be thrashed out as litigation might do it. I said that's what's happening sometimes. It gets there sooner that you think it will. It may well be that the person who, in fact, introduced the law never intended to give federal sanction to what the court decides. But, how do you know that? When you're sitting on the bench, you know that in a particular case, this may have very large implications. That could be true in the state courts too, by the way.

Hicke: But now you were dealing with law as a federal judge, right?

Poole: When I came to the federal court, I had been the United States attorney for eight years. So I dealt a lot with it. And when I first came to California, when Ben Duniway had appointed me to the Office of Price Administration, that was my first introduction to--well, it wasn't really. I can go back to the National Labor Relations Board. But I wasn't there long enough that it had any impact on me.

Hicke: But you've moved back and forth then between federal and state law?

Poole: Yes. Federal judges do get a sense of both of the importance of cases before them and of the need and desire to decide them properly. Just because a president may have appointed a particular judge doesn't mean that when they come to a situation in which the president has enunciated some particular position of bias on that, that one of his appointees down the line there is going to go right with him because he's the president. I guess some of them do, but, by and large, you have to try to decide the law based upon all of the criteria, all of your knowledge, and all of the feeling you have that this is what the Congress was trying to get to. Sometimes you fall short of that.

Sentencing Guidelines

Poole: We're having tremendous problems throughout the criminal courts of the country now with the guidelines that they have.

Hicke: Sentencing guidelines?

Poole: Yes, the sentencing guidelines. What really happened is that the Congress has decided that federal judges were doing what judges have done from time immemorial when Solomon, as a judge, had that baby and said he would cut it in half. They built up quite a case for the proposition that federal judges were deciding criminal cases unevenly. One judge would give a defendant, where there's a maximum let's say of twenty years, he may give him nineteen years, and the other one might give him seven years. It's hard to know which are oranges and apples in that barrel, and I think most of what Congress used in its terrible horror stories that accompanied the debates on the sentencing guidelines were artificially carved out. You can get all kinds of horror stories if you look for them. And I suppose we'll always get them. You get them in the guidelines too. The idea that somehow there is an administrative body with Solomonic wit and information that is able to provide for all of the human exigencies that may have to be decided in the context of federal trial litigation is nonsense, just utter nonsense. That's one reason that I am not on a committee of the Judicial Conference of the United States.

I was on the Criminal Law Committee. We met with the Sentencing Guidelines Commission at a time when the guidelines had not yet become law, and there was a strong urgency on the part of many federal judges to hold off doing it, as they had some years earlier successfully importuned Congress to do with respect to the Speedy Trial Act. The Speedy Trial Act also became politicized. There are provisions in the rules and, of course, the Constitution itself calls for a just trial, and a trial that is long delayed cannot be a just trial. So Congress enacted the Speedy Trial Act, which in effect set up some points that had to be considered before continuances could be granted in criminal cases. If the case exceeded the time periods--not in a situation where the defendant could be held to have agreed or gone along with or been responsible for it--then the defendant's case was dismissed. I think it was seventy days or something like that. So the federal judges and a lot of other people had made strong representations publicly and to the Congress to hold off the time before making these things the law.

In the meantime, there were ongoing projects in different district courts in which all cases were being tried as if the guidelines did exist. The Congress gave a period of grace on that, and then at the urging of many of the federal judges and scholars and professors of law gave further extension. The same thing happened on the guidelines, and so the commission was going around the country--it was this commission that was appointed to draw up the guidelines. They had a big staff. The commission was going around the country selling the value of the guidelines. At the time, I had been appointed by Chief Justice [Warren] Burger to the Criminal Law Committee, and I was there. We were to meet with the Guidelines Commission out in Montana. We went there and there was a whole lot of pressure on the members of that committee, but there were a couple of us who--

Hicke: From who? The chief justice?

Poole: Well, some, yes, from the chief justice. But I think mainly it was because some of the iron men in the United States Committee on the Judiciary were trying to get this thing through. To accomplish that was going to be the end of all of our travail in this world.

Hicke: So this is Congress you're talking about?

Poole: There were people who believed really, sincerely believed, and you could document a lot of worst cases in which they believed that federal judges' sentencing was disproportionate. Sentencing has always been disproportionate, whether it was the sword or otherwise. The commission scheduled this meeting with us out in Montana and we went there. There was a pitch made by those of us on the committee who remembered how the Speedy Trial Act thing had gone. Actually, the fact that they had gotten a continuation of the effective date of the Speedy Trial Act helped a lot. We were going to have to throw out a whole lot of cases if they didn't do it. There had always been some provisions that mandated a speedy trial, but seldom was that provision of the Federal Rules of Criminal Procedure ever put into practice.

The guidelines were much more horrible things than the Speedy Trial Act. I never got concerned that-- We had big calendars. When you're running three or four hundred cases, you've got a large criminal calendar, or it could be a criminal and civil calendar. You not only had to try the criminal cases, but you had to give the civil litigants a chance too. I wasn't as much concerned about the Speedy Trial Act furor as I became years later with the sentencing guidelines. When it finally came down, after discussion had been had out there in Montana, and then they took a vote on it, and, by George, there were only two of us who stayed

until the bitter end, voting for a continuance of the effective date.

Hicke: Only two of you on the J.C.U.S.?

Poole: Only two of us on that committee. Everybody else voted to have it put into effect right away. The committee had, as I remember, about thirteen to fifteen members, and Steve Breyer was the vice chairman of the committee, and the chairman was a person who had been appointed by the senator from South Carolina. Anyhow, we argued it quite at length, and finally I became the only one holding out. I continued to hold out, and it passed, with one voting against it. That would have been around about July or maybe even August of 1989. I think it was '88 or '89.

Chief Justice Burger retired; so we then got some communications from the new Chief Justice--Rehnquist. Rehnquist decided that the structure of the Judicial Conference of the United States was too unwieldy. I think he was correct in that. It had become a place where old crusts gathered, and there were six-year terms, so he decided to streamline it some. He wrote us--all the members of the Judicial Conference Committee--and told us that he decided to reduce--of course, whatever the chief justice wants to do, for the most part, the Conference goes along with it--reduce it from six-year terms to three-year terms. He sent me one of those letters, and he said that there would be three-year terms. The terms would be three years, and in order to be fair, they would provide that the terms of the present members of these committees would be for a maximum of three years. So they divided them into three parts. One third had three-year terms, one third had two-year terms, one third had one-year terms, and I think there were some who just went off, or were ready to go off anyhow. So the letter he sent to me explained this, and he informed me that he was pleased to announce that I would be reappointed for a one-year term.

So, he said, if you have any questions about this, please write me and let me know. I thanked him. I sent him a letter thanking him for his consideration, and I told him that I don't have any quarrel--some of the people had complained that it was too short a time--I said I don't have any quarrel with the length of time. I will not attempt to challenge what you have done. So far as expressing myself on the downgraded committee structure, I said you know what you can do with that. [Laughs] I left, and I haven't been on a Judicial Conference committee since.

X JUDGE, U.S. COURT OF APPEALS, NINTH JUDICIAL CIRCUIT

Appointment, 1979

Hicke: At that point, you were on the appellate court, right?

Poole: Oh, yes.

Hicke: Why don't we go back and you can relate how you were appointed to the appellate court, and then maybe we can compare the two courts.

Poole: On the appellate court, when Carter became the president of the United States, he established commissions across the country who received a lot of names from people in the various areas. I think each circuit had a committee. The Ninth Circuit had a committee, but, in fact, it operated as if it were two committees. One was the Northern Ninth and the other was the Southern Ninth. People sent their names in, or others sent their names in to the committees, along with some material indicating this person's experience, qualifications, and so forth.

Hicke: Would this be senators who would send in nominations?

Poole: I suppose some senators were doing it too, but the committee members were senators; John Frank, I know, from Arizona was chairman of the Southern Ninth.

Hicke: Who was sending the nominations?

Poole: The committees invited persons who were interested and solicited people who were knowledgeable about alleged qualifications of others. They had an application sheet that had a lot of information in it--very much on the order of the material that you'd get from the Judiciary Committee if you were nominated by the president to be a judge. Frankly, I really wasn't terribly interested in it, because I told you the history of how long it took me to get on the district court, and I was just as content as

I could be there. I didn't think I was a great scholar, and I didn't think that I was going to redo the appellate thinking of the country, and I liked what I was doing.

Charlotte didn't share that warm feeling about the district court--too many dinners missed, and too many things that I didn't get to, too many nights staying up pretty late. I always had the habit, from the time I was an assistant district attorney trying cases down at old Hall of Justice, that when I was trying a case, I seldom ever got to bed before let's say around two o'clock during the week anyhow, because I always insisted on having the police inspectors who were working on the case with me get the daily transcript and bring it out to me. The transcript would normally be ready around about nine o'clock at night. They'd get out to my house about a quarter of ten--

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Poole: They'd bring the daily transcript, and I'd go over that transcript. If they got it to me at ten o'clock or ten fifteen, I'd be up until one or two o'clock in the morning going over the transcript and making the notations and locations of what things were of importance, so the next day when I went to court, I knew what the evidence was that had already been taken. I liked doing it. It was pretty hard on my family, because there were a lot of things I didn't do. But when I was on a trial, I just wasn't available for doing much of anything else. I thought that being a trial judge was what I'd always wanted to be, and I was happy to stay there, so I didn't send any application in.

Somehow, between Charlotte, my wife, and Bill Coblentz, without saying anything to me--Coblentz came up to the Federal Building and he brought me this application. He said, "You've got to fill it out." So I put it in the desk, and he went away, and I did whatever I was doing, I've forgotten particularly what it was. But anyhow, he came back again, he called me, and he came and he said, "Tomorrow is the last day. You've got to have it in tomorrow." Charlotte called me and she said, "When I talked to you about this, you promised me that at least you would send the application in, and you haven't done it." I said, "Well--

Hicke: "Can I have a continuance?"

Poole: [Laughs] I said, "I'll do it." So I sat down and filled out one of them; it had about twelve or fourteen pages to it. It was a nuisance. Then Bill called me and said, "Did you do it?" I said, "I've almost finished with it." He said, "Look, this is the afternoon, and this thing has to be in." So I finished it up, and one of my law clerks--I was in the Federal Building--so one of my

law clerks took it to the Post Office at Seventh and Mission and mailed it. I think he sent it by Express Mail, as I remember now.

In due time, the committee moved around the circuit interviewing people. I got a call giving me a date they would like me to come in to interview. I couldn't come that day. It was to be on a Friday, but one of my old friends from the days when I was in the governor's office, Tom McBride, who is now a retired senior district judge, was retiring. He had been one of the early Kennedy appointments. He had been in the legislature. He lived in Sacramento, and he was having a retirement dinner, so Charlotte and I were both going up there to the retirement dinner, so I couldn't be at the meeting of this committee at six or seven o'clock the night before. So they said, okay, we'll see you on Saturday.

We went to the dinner in Sacramento. We came back, and Saturday I went and talked to the committee and answered their questions. They started off with something kind of provocative, I guess is the way you could describe it. They said, "President Carter is really interested in making the judiciary more receptive, both on race and color as well as gender, and that means that you have to make choices about whom you recommend." They said, "Now you've had some experience that a lot of people have not had. You have held a presidential commission for--I'd had it for eight years--and you're on the district court. You were appointed by President Gerald Ford. Don't you think it would be in the interests of the spirit of this effort if we took someone who had not had a commission?" I said, "That's not a bad idea." I told them I could understand that, and, "if that's how the committee felt about this, why that's fine. I know you'll do what you think is right, and that's the way I want to leave it with you." I don't know what they thought.

But in any event, I know that Bill Schwarzer, who is now the director of the Administrative Office of the Federal Judicial Center, had come earlier that day and gone before them, and they had put that same question to him. Some were saying that the federal judiciary has traditionally had very few minorities as judges, and there were very few women, and should we not, as a committee, be thinking of trying to expand the opportunities for those who have historically been either denied, or at least they haven't shared it. He told me, and he told them, that he agreed with that, and if you looked at his writings, he had often taken positions that sought to bring full opportunities to persons of gender, or color, or religion, or whatever it was had been a factor in their not being appointed to higher office. They said, "Then that's what we should do. You're on the court now." He said, "Of course, you know you have to have an entry level."

[Laughs] That's what he said, an entry level. And I said, "Bill, did you actually say that to them?" He said, "Yes. It was just like snow came into that room." [Laughter]

Hicke: A little frosty.

Poole: Oh, it sure was. I couldn't believe that he would say that. Anyhow, as I say, when I finished talking with them, it had been a good chat. There was nothing remarkable about it. They treated me as they did everybody else. I knew several of them on the committee. That would have been in 1979. Eventually, I realized that in various progressions I was fairly high on their list for it. Then something happened to me.

A Crucial Eye Injury

Poole: I think I told you about this thing up here, didn't I? [points to the right eyebrow]

Hicke: No, not on the tape.

Poole: I went down to Santa Barbara in 1977. I was a federal judge. I was down there because there was a symposium, and it had a whole lot of people. It was the best one of those things I've ever participated in. It was a symposium that the Ford Foundation, the Washington Post, and the Los Angeles Times had on fair trial/free press. They had a number of very distinguished people there.

They had an inner circle of people, and then there was an outer circle, and then there was the general audience there--people from the law schools, I guess the participants, they must have had forty of them. I was on this inner circle, and I sat next to the attorney general of California. While we were down there, there came the announcement that Jerry Brown was going to appoint Rose Bird as the chief justice of the California Supreme Court. I said to Evelle Younger, who was the attorney general, I said, "Ev, how does that go with you?" [Laughs] He said that he had promised the press he would have a press conference--this was on a Friday--the next day. So he did have it, and that's how I can remember when the date was, because Rose Bird's name was announced.

On Sunday, it was over and we were going back. While I was walking rapidly through the airport with Charlotte, somebody called me. It was John Kaplan, who at that time was a law professor at Stanford, and he had been one of my assistants when I

first became the U.S. attorney. We were good friends, and he called me. Instead of stopping and turning around, I kept walking. In the airport there, they had these kind of Spanish style entrances, and so what happened is, I walked right into it, and it really knocked me out. I was lying down on the floor, and someone came, but they wanted me to go into the hospital, and I wanted to get home. So I said to them, "We're booked on a plane. I would rather get to San Francisco and go to my own physicians there." So that's what I did.

I went there and I went to them and they took x-rays, and they found that there was no fracture. But it was a whack of a thing that happened. I had to have several neurological examinations, but finally they said I was okay, so I went about my business.

Then, two years later, I think I told you about my trip to mainland China. When I was on that trip, I woke up one morning seeing things swimming in front of my eyes, and I couldn't figure it out. I thought I'd gotten some dust or something in it. I didn't associate it with the accident. So when I came back, we had a friend who was an ophthalmologist who lived just a few houses away. I was at his house one day and told him what had happened. He said, "You'd better come to the office and let me take a look at you." The next day, on a Saturday, I went to his office and he looked at it. He said, "You have some detachment there." He said, "I think you'd better see your own ophthalmologist and have him take a look at it." So I said, "Okay." Well, my ophthalmologist, who, incidentally, just retired from practice about three or four weeks ago now, was out of town.

I was trying a case. I was up there [on the bench] and had a jury coming in, and I was reading the jury the instructions, and all of a sudden I began to see these little wiggles again. I knew the instructions, so I finished the instructions from memory and sent the jury out. Then I went into my chambers, and I phoned the ophthalmologist, and he said, "Come in tomorrow."

The jury couldn't agree that night, so the next day I read them some more instructions. I didn't read them. I gave the instructions to them because I couldn't see well. But I gave them the instructions and I sent them out, and they had a verdict in about an hour. Then I went down to the medical building down on Post Street, just across from the church. He examined me, and he said, "You'd better come into the office with me." And he said, "You've got detached retinas. It's going to take surgery. I don't do that, but up on the fifteenth floor of this building, there are doctors who do just that kind of work, and they're very good, and I recommend them."

So I went up to see them. One of them was Dr. Atkins and the other was an old-timer who had pioneered in laser surgery. They both examined me, and they said, "You will need surgery immediately. Laser surgery now will give you 80-plus percent of assurance." I said, "When do I need it?" They said, "You need it immediately." I said, "You mean like today?" They said, "We're going to send you to the hospital today."

So I said, "Can I go by my office and tell my people that's what's going to happen?" They said, "Oh, yes, but we've already made a reservation for you at the hospital." So I went to the Federal Building, and then I went home. I didn't call Charlotte. I didn't want to tell her on the phone. When I got home, she already knew about it. She was the vice president of Children's Hospital [board], and somebody had seen the name.

Hicke: That's where they made your reservation?

Poole: Yes, [laughs] and so she knew about it. I told her what had happened. She drove me to the hospital, and I think it was the next day that we had the surgery. This was during the time that the committee was making its report to the president--

Hicke: On your appointment to the--

Poole: Appointments to the Court of Appeals. I had the surgery, and it came out pretty well, but I was in the hospital for about six days. Then one of my friends in the Department of Justice, whom I had known from the time I was a U.S. attorney, called me and he said, "The president has signed off on three names, and yours is one of them. We hear that you had some surgery. What was it?" I told him what it was. I guess I was out of the hospital then. I told him what it was, and then I went over to see Jim Browning [chief justice of the Ninth Circuit Court], and I told Jim what had happened, and I said, "The doctors say that there is an 80-85 percent probability of success, but until I know that that's going to happen, I have to think very carefully what I am doing. Jim, is there a whole lot of reading that you have to do?" He said, "Yes." He said there was a lot of reading. There is. That's what we do all the time, all day long. I thought to myself, In honesty, I've got to let those people in Washington know. So I called back, and I told them. I was out of the hospital, but I guess I must have had bandages over this eye for a couple of weeks, and during that period of time, I went back to work. I could see out of this eye [indicates], and I went back to work. I remember I had one of those great, big, merger cases.

Hicke: Oh, complex litigation.

Poole: Yes, and they were arguing on whether there should be an injunction against it or not. My two law clerks came out to my house every day, and they read things to me, because I had these very dark glasses on with this bandage peeking out. Anyhow, when they called me from Washington, I told them what it was. And I said, "I obviously would not accept the commission until I have some assurance of what my situation is going to be." The doctors told me they couldn't tell me until September. So I was in no hurry, and in September, after all the tests, they said, "You're going to be all right." I said, "Do you think I'll be able to do the reading that would be required of this, doctor?" They said they didn't see any reason why I couldn't. So I called back to Washington, and that's when they released my name.

Hicke: That was September '79?

Poole: Yes, in September of '79, they released the name. Okay, it went all right. What happened was gradually, this thing formed [indicates his eye problem]. Now, I'm going to have more surgery, and they're going to take this out. This is dead tissue, they say. So I'm making an appointment, and I'm going to have that taken out.

Hicke: It's not affecting your eyesight?

Poole: No, but it's beginning to annoy me because I keep touching it.

Hicke: Yes, something that's not supposed to be there.

Poole: Yes, but I was very fortunate. Anyhow, all this happened during the time that there was a question of whether I was going to the Ninth Circuit. I thought I could probably stay on the district court for all my life, and I didn't have to worry about that. I had a lot of reading to do there too, but I was familiar with that, and I wasn't familiar with the court of appeals.

Hicke: What happened then? You were appointed as of the next year?

Poole: No, I was appointed in November 1979.

Hicke: Did you move over and start right away?

Poole: I didn't move out of the Federal Building right away, because my chambers at Seventh and Mission were uncertain. You should sometime come over and see the chambers I had there.

Hicke: Oh, I'd like to.

Poole: Beautiful chambers, unbelievable, with the dark redwood, highly polished paneling. Judge [Richard] Chambers, who had been the chief judge for many years, and who was undertaking the responsibility for the premises of the court, Judge Chambers didn't want me to have those chambers. He wanted to reserve them for visiting judges and sightseers who would come to the court. So I refused to leave the Federal Building. I said, "If you guys don't ever give me the chambers, I won't ever move." [Laughter] Jim [Browning] was unhappy about that. So he worked on Chambers, and they finally called me and said, "They're yours." Otherwise, I didn't come kicking and screaming. Looking back at it, I'm very glad now. I still like the district court. I still have some intentions, when I become a senior judge, of every now and then going and trying a case. But that hasn't happened yet.

Hicke: When will you become a senior judge?

Poole: I can do it anytime I want to. But first of all, I'm waiting for them to get the old building restored.

Hicke: You need your chambers.

Poole: I need my chambers back. I don't think I'll have any real problem. Because unless you had a tremendous amount of unused space, the senior judges retain their chambers.

Some Significant Cases in the Appellate Court

Hicke: I have a list here of some of your most important cases. And I have the opinions.

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Hicke: Just take a look and see what was most important about this one: Energy Conservation [Energy Conservation v. Heliodyne, 698 F.2d 386, 1982].

Poole: This is a fairly technical case though. It has to do with what are the necessary allegations in order to state an antitrust claim. I wouldn't regard that as being terribly significant.

Hicke: Okay. Was antitrust frequently an issue for you? I think it lost its prominence as an issue after a while.

Poole: That's right. The antitrust law has, in many particulars, been fairly well settled now. The Sherman [Antitrust] Act was 1890 [15

U.S.C.A., Sec 1-7], so its general principles have been gone over. What happens is the new technology comes upon us and new problems with that technology and, of course, the whole idea of keeping open the channels of commerce among the states is obscured at times, because it doesn't flow like it used to flow in freight trains.

Hicke: Flows by modem.

Poole: Yes, that's right. That damn modem does more harm than anything you can think of. I think I remember this case pretty well, the Noerr-Pennington Doctrine. The Noerr-Pennington Doctrine was a case that involved public officials being charged with having communications with persons who were involved in what might be called anticompetitive activities. For example, three or four prominent citizens who know the mayor of the city come down to talk to him, telling him how important it is that they not build that subway in that area because it's going to obstruct a whole lot of other things, and really they've got interests in property. So the question is, if it's a so-called conspiracy, and the mayor says, okay, I'll look at it again; I think you've got a point there--if the obstruction to the conspiracy is because citizens come to the source of government to seek redress for what they think will be some damage to their interests, is that cognizable as an antitrust violation? The Noerr-Pennington Doctrine says if that's what you really have, no, it isn't.

That's what this case was. Now in this particular case, the court of appeals held that allegations that co-conspirators used a lawsuit to generate adverse newspaper publicity in television coverage, thereby seeking to competitively harm the corporation, could be sufficient to state a claim for abuse of the judicial process and therefore were sufficient to support a claim under the sham exception to the Noerr-Pennington Doctrine. That's a technicality, but what they really mean is whether it's just all a sham just to get a technical advantage.

I see that Charlie Merrill concurred. He said, "I concur in Judge Poole's opinion. I add this note to express the view that whether the state court that is the subject of the complaint as sham will depend on the purpose of the plaintiffs in bringing it rather than on the purpose of the Heliodyne in promoting it." This is a very technical thing.

Hicke: It's indicative of what you have to learn.

Poole: Oh, yes.

Hicke: Here's Dyer v. Greif [766 F.2d 398, 1985].

Poole: Oh, Dyer v. Greif Brothers. Yes, I remember this case too.

Hicke: Yes, take as long as you want to look it over.

Poole: It was over in the Central District. The complainant brought suit alleging that he had been discriminated against on account of race and national origin, asserting a violation of Title 7 and California statute and claiming wrongful termination and breach of an employment contract under California law. The action was initiated in state court and removed to the district court, which dismissed the action with prejudice. On appeal, the court of appeals, Poole, circuit judge, held that state court lacked subject matter jurisdiction over Title 7 claim, when they didn't have it, and as a result removal of the action to the federal court did not confer derivative subject matter jurisdiction.

Hicke: Was that the important thing, the fact that you decided the state court didn't have jurisdiction?

Poole: It was in those days. The legislation was new. It no longer is. See, our circuit recently held that jurisdiction over Title 7 actions lies exclusively in the federal courts. They've changed that now.

Hicke: Oh, now you can go into state court?

Poole: Almost all states have the identical legislation.

Hicke: Oh, I see. Let's see, U.S. v. Greene [783 F.2d 1364, 1986].

Poole: This was a probable cause case. It was one of those cases where you had to trace what levels of knowledge the police had and at what stage in the proceedings they got this information. I would say that it's plainly a fact-based case, and it doesn't have very much in it.

Hicke: Staatz v. Dupnik [789 F.2d 806, 1986]. Again, I'm not sure about the pronunciation.

Poole: This was a nothing case. Actually, when his lawyer took certain actions for him on his behalf, he claimed that he didn't authorize it and "therefore for the courts now to hold that he is bound by that is unconstitutional."

Hicke: Well, I have one more. U.S. v. Most [789 F.2d 1411, 1986].

Poole: They were trying to track where this stuff went, so they put a beeper in the--

Hicke: This was heroin?

Poole: Yes.

Hicke: They put a beeper in the heroin?

Poole: Yes. It was an importation of heroin case, and the court of appeals held that (1) installation of a beeper device in the package mailed from Thailand did not violate the Fourth Amendment where a customs agent lawfully opened the package on the basis of reasonable suspicion that the package contained contraband, and (2) the totality of circumstances reasonably supported finding that defendant validly waived his Fifth Amendment right to have counsel present--that's another aspect of it. Let me take a look at a couple of these over here. I have some bound books of opinions.

Hicke: It's a whole ten volumes of your opinions.

Poole: Some of them are worth looking at, and some of them are not. Most of them I don't remember much anymore. Let me see. A lot of cases. Oh, here was an interesting case, the first one on this list here. Adamian. That was at the University of Arizona. Let's see, page 12, take a look at it. This is 1980, that's not so long ago. That's fourteen years ago.

Hicke: Quite a while to remember a case.

Poole: Adamian was a kind of an interesting case. Adamian was a professor at the University of Arizona, I think it was at the Tempe campus. They were having some demonstrations. There was some kind of a holiday, and the governor was going to appear riding in a limousine over the campus, and there was a radical group that didn't want him to do it. One of them threw himself in front of the governor's car, and Adamian was urging them on. So they fired him. This appeal here is whether his rights of free speech and so forth were violated.

Hicke: Did he sue? He sued the university?

Poole: Yes, he sued. I wrote the opinion and then he was out.

Hicke: So you said that his rights were not violated?

Poole: Yes. I'm trying to figure how did Mittendorf get in here. I don't quite understand how they do these cases. By the time they get in here, I'm no longer interested in reading them.

Hicke: Of course.

Poole: You understand.

Hicke: It's old history by that time.

Poole: Yes. I remember that case [Adamian]. It was kind of an interesting case. In its day, it was a not unimportant case, because that happened around 1981. And then here's Aladdin Hotel. I'm not sure how West chooses these things. I never read them. By the time they come bound up and all that, they are of slight interest to me.

Hicke: It looks like they could do with a good index or something.

Poole: Yes. They've got an index on the F.2d. You can take this index and go to this page number and pull the case. I've got them up to date now, but the latest one here was, I guess, 1979. So I have a lot of them around here some place, but I never think about them. The reason they're out is because when we moved, I had new clerks coming in, and I wanted to give them some reference to see some of the things that I had written.

More on Sentencing Guidelines

Hicke: Why don't you tell me, if you can, what the trend is in cases? Have you seen changes in the kinds of cases that you've been hearing?

Poole: Well, sure. I think the greatest surge of case subject matter these days has to do with the guidelines. More cases involve that than anything else.

Hicke: Are you saying that's the subject of the case, or that's the problem?

Poole: Judges are having to deal with that problem in every criminal case. It isn't like it happens esoterically in some cases. I was reading one at lunch; one of my clerks had done a draft, and I was reading it, and I thought to myself, good God, just imagine the amount of paper that we're consuming on this sort of thing. The question was this: a policeman in Portland saw a fellow who obviously was in a dope transaction with a young woman. They arrested him and arrested her, and she had a small quantity of contraband, I've forgotten what, probably crack or something like that. He had a small quantity. But he was a peddler, and he had been arrested a number of times in the state courts for very small

amounts, and yet he ended up with a sentence of [potentially] about twenty-seven years under these guidelines--well, he didn't end up with that many.

The district judge did what they call a departure up or a departure down from what might otherwise be seen as the punishment prescribed by the guidelines, and he went down. Congress has provided that if the United States attorney doesn't like what the judge has done, he can appeal. That was one of those cases where the judge departed down. He said this guy is just a small town guy with a number of petty little offenses. He wasn't really arguing that the trafficking in dope is of no consequence because it's a small amount. But what he was pointing out, what he was concerned with, was that the guidelines really have the purpose and the result of removing from society those with itches, though they may be minor itches. And so you get all of these months that you're mandated to impose upon some guy who's a small town punk. So that's what the federal courts are engaged in doing. I think that's the most litigated subject matter in federal criminal law today. You spend all that time. I was sitting down in the lunchroom across the street there reading this thing, and I thought, God, how much time do we have to give to this sort of thing?

Hicke: Is there any effort being made to change that?

Poole: Right now any such effort would go nowhere. With all of the manipulations that--for example, this child who was kidnapped and killed: I heard on the radio that her father went to Washington and said he wanted to speak with the president. Everybody is converting this whole thing into a basis for self involvement and aggrandizement. Everybody's got some limelight ambition. I don't know what they're doing in that case. I suspect that they ought to be having some autopsy findings before long. It was a terrible thing. The whispering in the aftermath--now people are now talking about stricter penalties. Somebody has some history of child molestation. The next time he gets on an interstate transit bus without having the proper fare, they put him up for nine years or whatever it is. That is a matter of very great concern, because what happens is that the media get these stories, and people are interested in it, so they keep playing them up. The more they play it up, the more uniform becomes the aftermath solution, and that will make the laws tougher.

Hicke: Have sentences increased due to the impact of the guidelines?

Poole: Oh, yes. They have to build more jails. That's what the president was talking about. He's going to build all these new jails. He's going to need them. It's the warehouse theory of

criminal justice. Put them in there, slam the door, and let them stay in there. I don't know the answer to crime, but I do think this, that there is something fundamental that's being missed in a country in which all of our energy is devoted to the symptoms of malaise and not really trying to do whatever the complex thing is that has to be done in order to eliminate the reasons why so many people are going for narcotics of various kinds. Nobody is wise enough or bold enough to think about it.

What they really want to do is fill the jails up with folks. That's the most simplistic thing that you can think of, and yet it's so attractive. Both of our new senators are running around the state yapping about a crackdown on crime.

Hicke: That's because that's what people want to hear, I guess.

Dianne Feinstein

Poole: That's what people want to hear. I'm going to sit down with Dianne [Feinstein] sometime. I've known Dianne for a long time. I knew her father, Dr. Goldman. Her first husband was Jack Berman, who is now a superior court judge in San Francisco. Her daughter, Kathy, is Jack's child. I was the first one to spot Dianne before Jack did. I was in the District Attorney's Office then. There still is a foundation that aims on getting young people who are in college and getting them brought into various institutions and businesses and state court things, so that they get a chance to see how it's operated. It's a public service thing, eventually--the Coro Foundation.

When she got out of Stanford, Dianne was a Coro Foundation fellow, and she was interested in the District Attorney's Office. They brought her over there, and Tom Lynch, who was the D.A., brought her down to my office, and I chatted with her to get some of her ideas and see if there was something that maybe she would be interested doing around there.

Jack Berman was one of the assistant D.A.'s. So when Jack came in a little bit later that day, I said, "Jack, where have you been? There was a very attractive girl that was here just a short while ago, and I was hoping you would meet her." So a few days later he said to me--his office was down the hall from mine--he came up and he said, "I met this girl you were talking about." The next thing, about three weeks or so later--

##

Poole: He said, "You'll be happy to know, I guess, I had a date with Dianne yesterday." I said, "Well, okay, that's good." And then they got married. We lived in Ingleside Terrace, Charlotte and I, out there overlooking Stonestown [shopping mall]. Jack and Dianne had a place on Seventeenth Street going toward Twin Peaks--they lived up there. Pretty soon Dianne had a little baby. It was born and we used to see her, and then something happened--they divorced. But the next time I saw the little girl was when she was in law school, and she came over to Seventh and Mission because she was an extern law clerk to one of the judges there.

Dianne has gotten to be a tough baby. She and [Barbara] Boxer are running around. They're as tough as voters require them to be.

Treatment of Criminals

Hicke: You said you obviously can't solve this problem, but what would you see would be a good way to go?

Poole: I have always had reluctance to suggest that we establish clinics in which persons who have this compulsion for drugs can go and get them, because that turns them loose with all of their weaknesses and propensities to engage in conduct which isn't apt to be of any higher nature than that. What I would like to see is to turn loose science to find out: is it true that once hooked they're gone? People say that, but have we devoted any part of our enormous rich resources to determining that? In other words, can we make them clean again? I know that it's not just physical. It's got to be up here too [indicates head], and I don't know the answer to it.

Nobody is willing to argue that we should commit large resources to doing this. But we expend that much and more on custodial and arrest procedures. The procedural criminal law is designed to take place where fault can be established, and that is why it's so easy to execute people who kill others in extraordinarily savage circumstances. Everybody can get mad with them, and everybody can say, "Good riddance to bad rubbish," but few people want to talk about it or want to do anything.

When I looked at that last execution and I thought, traditionally when we have a serious criminal situation, whether it's a death case or otherwise, everybody looks for the plan of vengeance. "What a dirty, rotten, lousy s.o.b. this guy is." Criminals understand what the focus is that's being directed at

them, and so I notice that now their lawyers try to humanize them. I have no quarrel with that. But the thing is that the end of all of the process is "Let's kill 'em, because they forfeited their right to live." If we all got on every occasion what we deserve, that could be an interesting thing in our society. There would certainly be some turnover. [Laughter]

When I was in the governor's office--I think I told you this--part of my responsibility was the death cases. I never saw one. The only time I ever saw the actual congregating at the death chamber was when they started telecasting them, and by telephone when I was on one of the panels that had this death case. But I believe that the criminal law, as we have devised it, doesn't have any room for being a pilot to change behavior before they get to the death chamber, none at all. I'm not even sure that people want to have it.

That little girl was kidnapped, and the two policemen stopped him or talked to him. At first there was a wave of wanting to pin responsibility on those two policemen. The first headlines were that they may have been so close they could have reached out and grabbed him. There's fear involved in this, and a number of people who flocked to where they had-whatever they called it--an office that they were operating out of, because that's where the spotlight was. We have countered our fears of crime by kind of glamorizing it, making it the evil thing, and sort of preparing the way for everybody to get on the bandwagon of righteousness. We're the good people, and they are the bad.

I watched an execution on television from Arizona about a year or two ago where the prisoner was just--you could see contortions. I don't know where we're going on this. Society gives rewards to people who can manipulate society, and [it's discouraging] listening to some of those people in Congress talking as they do, and just look at the headlines in the newspapers when these things happen. Sure, people must have the news, but it's all a great drama.

Appellate Procedures

Poole: It's just that, you know, we have all these mechanisms in our court for handling these cases. Our normal hearing panel is a three-judge panel. The judges are selected for panels by lot. We have a big drum and we have the names in it, and the drum turns and somebody reaches in and takes out a name. There is a name for every judge on our court. So they take out this name and put it

down, and that person's name goes on a tentative list. So our panels are normally of three judges, and that's how we get a three-judge panel selected.

Here's how it happens. Joe Smith is convicted in Arizona of murder. Now Arizona has a procedure that's very much like the procedure that we have on the federal side. Arizona has a state court. The trial will be in some hall of justice or whatever they call it, and he'll be tried and he'll be convicted, probably by a jury, but in a rare case, by a judge.

Now once he's convicted, then there is a mechanism in the state by which he may make an effort to claim that there were events or transactions that occurred that didn't get into the trial record but which made that trial unfair to him. So he gets that, and that's true in California too. He makes the claim and he files a writ of habeas corpus and that, then, is heard by an appellate panel, which will hear it, and, for the most part, deny it.

Then he has then a right to go to the supreme court of the state, and they have all kinds of technical rules that say, for example, if you're going to talk about something that didn't happen in the courtroom, or if you're going to talk about your lawyer refusing to call witnesses of a certain kind and therefore deprived you of that right--this wouldn't appear in the transcripts, it would be something outside of that--you must do that by what amounts to the filing of a state habeas corpus petition, because the supreme court probably isn't going to hear that unless it's novel or unusual. But if it is, then you have a right to go up to the state supreme court, and the state supreme court will then hear your case on the merits. When they deny, within a certain period of time, I think for the first time it's ninety days, you go and you have your full appeal argued before--if they grant your argument--the state supreme court. If the state supreme court turns you down as they do mostly, then you have now exhausted your state appeals.

The next thing you do is, the prisoner files a petition in a district court of that state. In the district court, in his habeas he argues that he was denied a fair trial, or whatever it was. He's now heading for the feds [federal courts], so he's got to show and he's got to argue that some federal right has been deprived. So he does that. If he's from Arizona, he lodges that in the district court of Arizona. A federal judge then hears his case, and if the federal judge turns him down, then he has an appeal from the district court, and that appeal comes to us.

As soon as he files a petition for habeas corpus in the district court in Arizona, our court is notified--the Clerk [of the Court]. Under our rules, the clerk then draws a death panel. That's what we call it, a death panel, of three. The death panel is drawn at random, and they don't do anything then, but they are waiting. Let us say this matter is now before a district court in Sacramento. When the district judge hears that case, there are a lot of technicalities that have to be observed. Suppose the district judge denies the writ. The guy says he was deprived of a jury trial, and the district judge finds that the record is to the contrary. He waived a jury and that kind of thing.

When the district judge denies the writ of habeas corpus, he now has an appeal to our court. That appeal will come first to that special three-judge death panel that we have selected, but now, since he has been denied and our three-judge death panel is going to hear his appeal, we now select an eleven-judge panel. That's our en banc panel, and that panel doesn't do anything yet. When the case comes up to be heard on appeal before the Ninth Circuit, it comes first to the three-judge court, and the three-judge panel takes it. The three-judge court may send it back for something, but if they don't send it back, then they proceed to analyze it, have oral argument, and to decide it. Once they decide it, the case then goes to that en banc court, and that court then will hear the case. As you would expect, since you've got eleven judges on the en banc court, you've got more room for controversy than you had before.

Hicke: A few more opinions there.

Poole: So the en banc court will hear this and then it decides. The en banc court is a little bit less efficient than the three-judge court, because you've eleven minds and tongues. Eventually, they'll decide, and by now the time is really running on this guy. He's got a death date. The more protracted the deliberations before the en banc court and the more argumentative that matters are, the more time is expended in doing this, and when that happens you may find that the date of execution is really close upon us. So everybody is working on it. The press is working on it, and all kinds of new theories are being presented to the en banc court about why they should take some action. Everything is designed--it may not be designed, but it has the result of whipping up feelings, and it's sort of like you're getting ready to go to the circus. You get all the mileage that you're going to get out of it.

Hicke: Raising the level of excitement?

Poole: That's true. Now television comes right in on a lot of this, and you're looking at that. It's sort of like you know that there is a big spectacle that's going to happen; they're going to go to the park, and they're going to shoot fireworks. So many people are counting on that. They want this to happen. The lesson that our court has to keep in mind--and they don't always seem to do so--is that we have very great limitations on what we can do. We don't sit to rehear the merits of a trial. We sit to hear the contention that a substantial part of that trial resulted in a deprivation of some right secured to this condemned person by the Constitution of the United States or the laws of Congress. When we get into that stage, ours is supposed to be a limited review, but, of course, the hurly burly comes from around San Quentin, people who are waiting for the big event. A lot of them are good citizens. They sincerely shudder in horror that this sort of thing can happen.

I can't help but think that it's like the television promising you that it will be one great show. And if somebody comes and says, Now we've canceled the show, it's sort of like the temperature is falling on everything. We're so used to having these things go on now that we don't really want to have a series of laws in which we're going to say that we'll take these people and put them in a nice, clean, sanitary institution at the expense of taxpayers and give them some dope and eliminate from their systems this thing at our expense. You don't get the office proposing that sort of thing. I don't know what the future is.

Hicke: We'll just have to see, I guess. You've certainly given us an informative and interesting interview, and my thanks to you.

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S. F. Examiner—Page 7
 Friday, Oct. 6, 1961 ★CCCC★

An 'A' Grade for SF

Here on Business

Bobby K's Review

By BILL BOLDENWECK

Attorney General Robert F. "Bobby" Kennedy surveyed the San Francisco scene yesterday and found it relatively free of organized crime.

The President's brother and probably his closest confidant was here as part of a West Coast tour of United States Attorneys' offices which will take him today to Portland and Seattle.

He had earlier made an inspection of the Los Angeles area.

SMALL PROBLEM

After conferring with U. S. Attorney Cecil Poole here, Bobby said:

"As a general proposition San Francisco is less of a problem area than other large cities. This is due to the work done by the law enforcement agencies, and in the last analysis a tribute to the citizens themselves."

He laid particular stress, in his talks with officials here, on newly-enacted legislation designed to fight interstate crime.

Basic to this struggle, he said, is the \$7,000,000,000 illegal gambling industry, which involves some 70,000 people.

As Poole, the first Negro in the continental United States to be named to a U. S. Attorney's post, listened, the Attorney General said of civil rights:

"I am not certain that legislation is the long range answer to the civil rights problem, but I may ask for more legislation in this area."

He said he felt "great progress" had been made in civil



PRESIDENT'S BROTHER HERE ON TOUR

... Attorney General Robert F. Kennedy with U. S. Attorney Cecil Poole

rights during the past eight months.

BRIGHT SPOTS

Particularly gratifying, he noted was the quiet integration of schools in Atlanta, Memphis, Dallas and New Orleans, "with no incident or disorder."

Commenting on the work of the San Francisco office of the Department of Justice's anti-trust division, he said:

"We are increasing our activities in this field.

There are "several price-fixing investigations in San Francisco and northern California that I am reviewing at this time," he said.

SPIES INCREASE

With regard to Communism, Bobby said "the party hasn't attracted much of a following, and has no power as such, although it has some

strength to influence opinion on some occasions.

"But espionage is on the increase in the United States."

Following a press conference at Poole's office, Kennedy was host to a group of 20 District and Circuit judges at a luncheon at the Towne House. Veteran Federal court observers said it was the largest congregation of the often-individualistic jurists in recent history.

From Oakland Post, July 17, 1968

Faces Around The Bay



The face of U.S. Attorney Cecil F. Poole is almost as well known around the world as it is around the Bay. Former clemency secretary to former Gov. Edmund G. Brown, Poole became known worldwide during such famous controversies as the Chesman case. Recently nominated to the Federal Court by President Johnson, he has been U.S. Attorney in San Francisco since 1961, appointed by President Kennedy. He was also a deputy district attorney in San Francisco and before that, practised law in Pittsburgh.

Cecil F. Poole

Circuit Judge, Ninth Circuit
P.O. Box 547 San Francisco, CA 94101
(415) 556-5446

Appointed in 1979 by President Carter

Born: 1914

Spouse: Charlotte Crump

Children: Gayle A., Patricia M.

Education Univ. of Mich., A.B., 1935; LL.B., 1938;
Harvard Univ., LL.M., 1939

Military Service Army, 1942-45, 1st Lt.

Private Practice Brown & Jones, Pittsburgh, 1940-42;
general practice, San Francisco, 1947-51; Jacobs, Sills &
Coblentz, San Francisco, 1970-76

Government Positions National Labor Relations
Board, 1942; Chief, Regional Appellate Office, Office of
Price Administration, San Francisco, 1946-47; Assistant
District Attorney, Chief Superior Court Deputy, San
Francisco, 1951-58; Secretary, Legal Counsel to Governor
Edmund G. "Pat" Brown, 1958-61; U.S. Attorney, N.D.
Cal., 1961-70

Academic Positions Instructor, Golden State Univ.
Law Sch., 1952-58; Fellow in Residence, Yale Law Sch.,
1970; Professor of Law, Univ. of Cal., Berkeley, 1969-70

Previous Judicial Positions U.S.D.C., N.D. Cal.,
1976-79

Professional Associations A.B.A.: Standing
Committee on Legal Aid, 1968-70; Chairman, Individual
Rights Committee, 1971-72; House of Delegates, 1972-74;
Conference of Federal Trial Judges; Director, Nat'l Legal
Aid and Defender Assn., 1979

Pro Bono Activities Director, Walter & Evelyn Haas
Fund

Publications *Philosophical and Moral Underpinnings of
Human Rights Beyond Constitutional Rights: Why Domestic
Courts Should be Concerned* (transcript), 11 S.U. L. REV.
105 (1984)

Media Coverage According to a profile in the Daily
Law Journal, Judge Poole has a reputation for speaking his
mind. His forthrightness reportedly twice cost him a seat on
the federal bench, but the third time he saw his nomination
through to appointment. One civil appellate practitioner
reportedly said "he seems to look a lot at what the spirit is
behind a particular law and make his opinions follow that
spirit." The judge himself said that the hard cases were
those in which following the spirit leads to an "unjust
solution." In such cases "you have to dissent and give
reasons why," he observed. DAILY L.J., Aug. 6, 1987.

Lawyers' Evaluation Most attorneys described
Poole's knowledge of current legal developments and issues
as fair to good. "He is a common sense judge. He is not
given to fine legal distinctions. He cares about coming to
the right result." "He is not terribly conversant with arcane
banking terms." "He doesn't have a great deal of capacity
for the difficult case." A substantive minority of attorneys
were very impressed with this judge. "He is an excellent
court of appeals judge." "He is a very intelligent man." Most
attorneys said he is courteous. "I always found him
easy to talk to." "He has decorum but also a sense of the
ironies of life." "He can be ferocious when he feels
someone is misleading the court."

Attorneys said he is well prepared for oral argument.
Several attorneys described him as an active questioner.
"He will interrogate you." "He loves to engage in
discussions that may not be relevant but that he is
interested in." "He always finds three sides to the
issue—plaintiff's, defendant's, and his side." "Sometimes [his
way] is a good middle way and sometimes his path will
frustrate the attorneys who have lived with the case." A few
others said he is relatively quiet. "He only asks questions if
he is interested."

Most attorneys said he writes good opinions. "He
writes common sense opinions that straightforwardly deal
with the issues." "He writes excellent opinions that look
like a story of the case. A lay person could understand
them." "He writes short, but o.k. opinions."

An attorney described Poole as a liberal in civil cases.
opinion divided on his ideology in criminal cases.

San Francisco Chronicle

February 26, 1990

Charlotte Crump Poole

Charlotte Crump Poole, 72, a longtime San Francisco civic leader and former publicity director for the NAACP in New York, died at her Novato home Wednesday of cancer.

Mrs. Poole was the wife of Cecil F. Poole, a judge on the U.S. Court of Appeals in San Francisco. She was a member of the Board of Overseers at the University of California at San Francisco, and until last year was a trustee of the UCSF Foundation.

Born in Pittsburg, Texas, Mrs. Poole was a journalism and political science graduate of the University of Minnesota, and was a reporter and then assistant editor at the Pittsburgh Courier in Pennsylvania before moving to New York.

She became publicity director for the NAACP in New York, and worked closely with Thurgood Marshall, the organization's special counsel who later became a justice on the U.S. Supreme Court.

During World War II, Mrs. Poole was an information specialist with the federal Office of War Information in Washington.

After moving to San Francisco in 1946, the Pooles had two daughters, Gayle and Patricia, and Mrs. Poole became involved in many organizations working on community projects and urban affairs. She was a co-founder of Jack and Jill, an organization designed to promote unity within families, and was an active member of the Council for Civic Unity.

Before becoming a foundation trustee at UCSF, Mrs. Poole served as a vice president and director of

Children's Hospital in San Francisco.

She is survived by her husband; daughter Patricia, and a grandchild, Nicholle Charlotte Allair, both of Novato.

A memorial service will be conducted at 4 p.m. Saturday at the Neptune Society Columbarium, 1 Loraine Court, San Francisco. The family suggests contributions to the Hospice of Marin, 150 Nellen Avenue, Corte Madera 94925, or to the American Cancer Society, 973 Market Street, San Francisco 94103.

San Francisco Examiner

November 14, 1997

Legal pioneer Cecil Poole dies at 83

First black federal judge in Northern California

By Zachary Coile
OF THE EXAMINER STAFF

Lawyers and judges, politicians and civil rights activists mourned the death of one of The City's most esteemed legal lights, Cecil F. Poole, who broke ground as the first black federal judge in Northern California.

Judge Poole, a retired 9th U.S. Circuit Court of Appeals judge, died at a San Rafael nursing home Wednesday night of complications from pneumonia after a long illness. He was 83.

In a career that spanned 55 years, Judge Poole challenged notions of what blacks could aspire to in the legal profession. He was the first black U.S. attorney in San Francisco and the second black judge appointed to the circuit court.

Judge Poole also served as California Gov. Pat Brown's legal counsel and clemency secretary. He was appointed to the 9th Cir-

[See POOLE, A-18]

◆ POOLE from A-1

Judge Poole made law history

cuit court by President Jimmy Carter in 1979.

"We've lost one of the giants of the profession," said Jerrold Ladar, who headed the U.S. attorney's criminal unit under Judge Poole. "What he believed in, he stood up for very tall."

A moderate Democrat, Judge Poole twice had his appointment to the District Court blocked by conservatives. He finally reached the federal bench in 1976, after being nominated by President Gerald Ford.

At one time, Judge Poole was being considered as a possible nominee to the U.S. Supreme Court, though the bid never materialized.

Born in Alabama

Born in Birmingham, Ala., he moved with his family to Pittsburgh as a young boy. The son of middle-class parents who ran a mortuary, he became interested in the law watching an attorney defend an acquaintance of his father's in court.

He attended the University of Michigan and earned his law degree from Harvard University in 1939. He was admitted to the bar in 1940 and began practicing law in Pennsylvania.

After serving as a judge's advocate for the U.S. Army Air Corps during World War II, he moved to San Francisco, where he got a job with the National Labor Relations Board.

Judge Poole later went to the district attorney's office, which was run by Pat Brown. In 1949, he became the City's first black deputy district attorney.

He was named chief of regional appeals for the U.S. Office of Price Administration in The City before following Brown to Sacramento in 1959.

In 1961, President John F. Kennedy tapped Judge Poole to become U.S. attorney in San Francisco. He held the post for eight years before returning to private practice.

His initial bid for a federal judgeship was scuttled by a single incident. In 1968, five anti-war demonstrators at an Oakland draft center were arrested by a federal marshal for sedition. Because the marshal never asked for a warrant, a furious Judge Poole released the demonstrators.

Murphy never forgot

Sen. George Murphy, R-Calif., backed the marshal and never forgot the incident. Murphy later would put a hold on the nomination, preventing it from being voted on.

As one of his last acts of office, President Lyndon Johnson nominated Judge Poole again for the District Court. When President Richard Nixon was elected, he withdrew his name. After Nixon resigned, Ford revived Judge Poole's bid.

San Francisco District Attorney Terence Hallinan recalled trying cases before Judge Poole as a district judge. He described him as kind but firm.

"We knew each other from the civil rights days," Hallinan said. "Even though he was a moderate (on civil rights) and I was more, let's say, aggressive, we always liked each other and had a lot of respect for each other."

In his private practice, Judge Poole served for several years as an entertainment lawyer for such clients as Bill Graham, Santana, Jefferson Starship and the Doobie Brothers.

Judge Poole served as a director of the NAACP Legal Defense and Education Fund and was a trustee of the Urban League. He also

worked as a law professor at UC-Berkeley, before taking the bench.

On King's birthday

Judge Poole began his retirement from the court in 1996, going on senior status on Jan. 15, Martin Luther King Jr.'s birthday.

His daughter said that until her father's health declined, he went to his office every day to review cases.

Memorial services are pending. To honor Judge Poole, U.S. District Judges Thelton Henderson and William Orrick agreed Thursday to a motion to recess in his memory.

Judge Poole is survived by his daughter, Patricia, a granddaughter and a nephew.

His wife, San Francisco community leader Charlotte C. Poole, and daughter Gayle, died previously.



EXAMINER/1990

Judge Poole's daughter, Patricia, shown in this portrait with her father, said her father went to the office every day until his health failed.

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